CALIFORNIA TAX CREDIT ALLOCATION COMMITTEE

915 Capitol Mall, Suite 485
Sacramento, CA 95814
p (916) 654-6340
f (916) 654-6033
ctcac@treasurer.ca.gov
www.treasurer.ca.gov/ctcac

REVISED

DATE: October 28, 2013

TO: Tax Credit Stakeholders

FROM: William J. Pavão, Executive Director

SUBJECT: Proposed Regulation Changes for 2014 with Initial Statement of Reasons

Attached for public review and comment are the California Tax Credit Allocation Committee (TCAC) staff's proposed regulation changes for 2014. This summary memorandum highlights what TCAC staff proposes to present to the Committee for their adoption in January 2014. TCAC staff will conduct public hearings to solicit comments as follows:

Tuesday November 12th	**Oakland** Elihu Harris State Building 1515 Clay Street, Room 2 1:00 p.m.
Wednesday November 13th	**Sacramento** Employment Development Department 722 Capitol Mall, Auditorium 1:00 p.m.
Thursday November 14th	**San Diego** San Diego Housing Commission 1122 Broadway, 4th Floor Conference Room 1:00 p.m.
Friday November 15th	**Los Angeles** Ronald Reagan State Building 300 South Spring Street, Auditorium 9:00 a.m.

TCAC staff is proposing both substantive changes affecting policy or procedures, as well as changes that simply clarify existing policy or align existing language with a proposed substantive change elsewhere in the regulations. In summary, the proposed regulation changes are as follows:

Proposed Substantive Changes:

1. Establish and define the term "Tribe." **Section 10302(oo), page 1 of the attached draft.**
2. Add the term "tribal chairperson" to the local notification requirement. **Section 10305(f), page 2.**

3. Require that applications proposing At-risk or Special Needs housing types be considered, first, within those relevant set-asides before cascading into a geographic apportionment. **Section 10315, page 2.**
4. Amend the definition of homeless populations. **Section 10315(b), page 3.**
5. Eliminate the option for rural applicants to compete in the At-risk set-aside, and add HOME funded projects to the RHS apportionment within the rural set-aside. Also, establish a two-year Native American pilot apportionment within the rural set-aside. **Section 10315(c) and (d), page 5.**
6. Eliminate Single Room Occupancy (SRO) reference from the Special Needs/SRO set-aside. **Section 10315(f), page 7.**
7. Eliminate confusing language and clarify the general State statutory restriction on using State credits in projects receiving a federal 130% basis increase due to its DDA or QCT status. Also, create an exception to the general rule for Special Needs housing type applications for State credits. **Section 10317(c) and (d), page 9.**
8. Establish minimum qualifications for subsequent parties entering a project's ownership structure during the regulated life of the project. **Section 10320(b), page 11.**
9. Along with clarifying reorganization and wording changes, permit the TCAC Executive Director to request scoring omissions, along with currently-permitted threshold omissions, from parties other than the project's applicant or developer. **Section 10322(d) through (f), page 12.**
10. Except tribal trust land from the general program appraisal requirements. **Section 10322(h)(9), page 13.**
11. Establish a documentation standard for redevelopment funding and State Department of Finance approval. **Section 10322(h)(16), page 15.**
12. Add an alternative to a chain of title report for property on tribal trust land, and clarify that appraisals are to be submitted with preliminary reservation applications. **Section 10322(h)(25)(A) and (26)(A), page 15.**
13. Remove the final reservation submittal requirement. **Section 10322(i)(1), page 18.**
14. Relocate the requirement that points for assumed public debt would only be awarded for the original loan principal amount, and only when the public lender provides written approval of the assumption. Also, exclude public funding for land acquisitions from competitive consideration within the tribal pilot apportionment. Finally, clarify that the 15-year loan term minimum standard is an "at least" standard rather than an "in excess of" standard. **Section 10325(c)(1)(C), page 24.**
15. Eliminate experience scoring features for portfolio projects in service less than three (3) years. Also, specify that relevant general partner and property management experience is demonstrated through active California tax credit projects. Reduce the minimum required capacity of contracted management companies for inexperienced general partners and require the general partner to acquire relevant tax credit property training. Finally, assure that any new tax credit property general partner would be equally experienced as the exiting GP for the duration of the 15-year tax credit period. **Section 10325(c)(2), page 26.**
16. Lengthen the permissible distances for rural off-site services that may serve as an alternative to on-site services. **Section 10325(c)(5)(B), page 30.**
17. Establish additional sustainable building method scoring options for rehabilitation projects. **Section 10325(c)(6)(D) through (F), page 31.**

18. Add references to the Sustainable Building Workbook and clarify when the workbook is required and when it may be forgone. **Section 10325(c)(6)(H)(1) through (5), page 33.**

19. Establish 180-day submittal requirements that mitigate the need for a Final Reservation submittal for 9% projects. Also add conforming tribal references and eliminate an historic reference to a 180-day extension. **Section 10325(c)(8), page 36.**

20. Eliminate State credit exchange point option for projects requesting State credits. Also update Universal Design standards and increase available points from one (1) to two (2) for Universal Design and smoke-free residences. **Section 10325(c)(9), page 38.**

21. Add a new initial tiebreaker for single-jurisdiction geographic apportionment applications. Also, include a reference to the Native American Housing Block Grant as a public operating subsidy for final tiebreaker purposes. **Section 10325(c)(10)(A), page 39.**

22. Incorporate the Native American pilot apportionment into the application selection sequence, and establish that State credit requests within the set-asides would be honored, even if that would require forward committing subsequent-year State credits. **Section 10325(d)(1), page 41.**

23. Stipulate that title status reports suffice for title reports for tribal trust land sites. **Section 10325(f)(2), page 42; and Section 10326(g)(2), page 52.**

24. Add a provision that minimum construction standards must be maintained when replacing required items or systems. Also incorporate references to the Sustainable Building Method Workbook, delete inappropriate references to a HERS II reports, and correctly incorporate relevant references and standards. **Section 10325(f)(7), page 44.**

25. Establish new criteria for qualified rehabilitation projects requesting 9% credits. **Section 10325(f)(10), page 47.**

26. Add three- and four- bedroom units to one- and two-bedroom unit size minimums that may be waived by the TCAC Executive Director. **Section 10325(g)(1), page 48.**

27. Change the Senior housing type threshold requirement for 9% credit applications to a 62-years of age standard, and require Universal Design construction for all Senior housing type units. Also remove an historic start date for emergency call systems requirements. **Section 10325(g)(2), page 49.**

28. Update the Special Needs descriptive language to include individuals living with physical and sensory disabilities, as well as emancipated youth transitioning out of foster care. Delete historic references to teenage parents. **Section 10325(g)(4), page 51.**

29. Add "title status report" as adequate alternative documentation for developments on tribal lands. **Section 10326(g)(2), page 52.**

30. Establish that minimum experience scoring references for general partners and property managers do not include points available for passing a training examination as described earlier in regulation. **Section 10326(g)(5), page 53.**

31. Discontinue the one percent (1%) basis limit boost for tax exempt bond projects for each unit targeted to households at 50 percent of AMI and below. **Section 10327(c)(5)(C), page 55.**

32. Designate 9% credit applications proposing Special Needs housing type projects as DDA projects. **Section 10327(d)(2), page 56.**

33. Add projects on tribal land to the list of exceptions to the property tax underwriting assumptions. **Section 10327(g)(2), page 58.**

34. Establish a second underwriting submittal deadline at 180 days following a preliminary reservation for competitive applicants not bound by 180-day readiness requirement. Also, remove submittal items from carryover allocation provisions. These changes would move submittals from carryover to the 180-day deadline, and would replace the final reservation submittal requirement altogether. **Section 10328(c) through (e), page 59.**

35. Specify that, in the event rental or operating subsidies are lost over time, TCAC may accommodate Special Needs projects transitioning to more general populations as needed for financial viability. **Section 10337(a)(2), page 61.**

36. Establish priority protocol for housing persons with physical or sensory impairments within accessible or adaptable units within a project. **Section 10337(b), page 62.**

Proposed Clarifying or Conforming Changes:

1. Correct a reference to an older adopted Qualified Allocation Plan (QAP) and accurately refer to State regulations as the California QAP. **Section 10302(dd), page 1 of the attached draft.**

2. Conform to the proposed elimination of the final reservation process at Section 10322(i) by deleting a reference to final reservations. **Section 10302(ii), page 1.**

3. Delete existing references to rural applicants in the At-risk set-aside in conformance with the substantive change at Section 10315(c) above. **Section 10315(e) through (j), page 7.**

4. Delete 2013 geographic apportionment percentages, leaving previously-established updated percentages and regional rank order. **Section 10315(i), page 8.**

5. Clarify that State credit award amounts equal up to 30 percent (30%) of a 9% project's requested eligible basis, or 13 percent (13%) of a 4% project's requested eligible basis, consistent with existing State law. **Section 10317(a), page 9.**

6. Add the terms "Tribe" and "tribal chairperson" to parallel existing jurisdictional references. **Section 10322(h)(14), page 15.**

7. Correctly relocate items currently listed in regulation under the heading "Additional Subsequent application documents" to the subsection "Standard application documents." **Section 10322(h)(25), page 15 and Section 10322(i), page 18.**

8. Remove an historic effective date for conditions relative to Certified Public Accountant's independence and adherence to specified professional standards. **Section 10322(i)(2)(B), page 19.**

9. Remove an historic effective date for establishing when a "substantial change" in the project or "extraordinary increase" in reserved credits would warrant a new application for a 4% credit reservation. **Section 10322(j), page 24.**

10. Correct references to the California Energy Commission's rating systems and reports. **Section 10325(c)(6)(D), page 31.**

11. Acknowledge a 50-year restriction for regulatory agreement terms on tribal land. **Section 10325(c)(7), page 35; Section 10325(g)(1)(I), page 48; Section 10325(g)(3)(H), page 51; Sections (g)(4)(G), page 51; Section (g)(5)(A), page 52; and Section 10327(c)(5)(C), page 55.**

12. Clarify FHA-insurance documentation requirements by using correct HUD processing references. **Section 10325(f)(3), page 43.**

13. Delete an historic effective date reference for requiring 10 percent of a 4% credit project's units be regulated at 50 percent of AMI. **Section 10326(j)(3), page 54.**

14. Conform an existing regulatory cross-reference to an earlier proposed renumbering of the placed-in-service application provisions. **Section 10326(k), page 54.**
15. Clarify that developer fee limits apply to simultaneous phases of a single project. **Section 10327(c)(2)(C), page 54.**
16. Correct references to energy use measures and California Energy Commission performance rating systems. **Section 10327(c)(5)(B)(4), page 55.**
17. Relocate the minimum debt service coverage ratio requirement to Section 10327(g)(6) alongside the discussion of cash flow maximums. **Section 10327(c)(6), page 56 and Section 10327(g)(6), page 59.**
18. Move fee and cost deferral limits to Section 10327(c)(2) where developer fees are discussed. **Section 10327(c)(2)(D), page 55; and Section 10327(d)(2), page 56.**
19. Move operating income and expense assumptions from Special Needs paragraph to the location of a more general underwriting discussion. **Section 10327(g)(1), page 57.**
20. Remove an inoperative historic reference to a start-up accommodation for high-rise developments seeking to exchange prior-year for current-year 9% credits. **Section 10328(g), page 61.**
21. Delete an historic start date for specified annual reporting requirements. **Section 10337(c)(3), page 63.**
22. Delete an historic start date for TCAC's on-site compliance monitoring. **Section 10337(c)(4), page 63.**
23. Add a cross-reference to an earlier regulation section addressing property ownership changes. **Section 10337(d), page 64.**

2014 Proposed Regulation Change with Reason
October 25, 2013

Section 10302(dd)

Proposed Change:

dd) QAP. The "Low Income Housing Tax Credit Program Qualified Allocation Plan," ~~adopted by the Committee on December 11, 1997~~ as adopted in regulation Sections 10300 et.seq., and in accordance with the standards and procedures of IRC Section 42(m)(1)(B).

Reason:

This change would correct an archaic reference to a 1997 QAP by citing the program regulations as California's Qualified Allocation Plan. Under California Administrative Law, rules of general applicability must be promulgated in the form of regulations. Health and Safety Code Section 50199.17 codifies how TCAC may promulgate and adopt program regulations. TCAC's regulations codify California's QAP consistent with IRC §42(m)(1)(B).

Section 10302(ii)

Proposed Change:

ii) Reservation. As provided for in H & S Code Section 50199.10(e) the initial award of Tax Credits to an Eligible project. ~~Reservations may be preliminary or final.~~ Reservations may be conditional.

Reason:

This change would eliminate a reference to a final reservation, which TCAC intends to eliminate as a program requirement (see proposed change at Section 10322(i), page 17 below).

Section 10302(oo)

Proposed Change:

oo) Tribe. A federally recognized tribal entity located in California.

~~oo)~~nn) Waiting List. A list of Eligible Projects approved by CTCAC following the last application cycle of any calendar year, pursuant to Section 10325(h) below.

Reason:

This change would define a Native American "tribe" as recognized by the United States Department of the Interior. The Department of Interior's Bureau of Indian Affairs periodically publishes a list of tribal entities recognized and eligible for federal funding. The most current list was published in 2013 and includes 109 tribes located in California.

Defining the term "Tribe" is necessitated by the proposed Native American pilot apportionment proposed at Section 10315(c)(2).

Section 10305(f)

Proposed Change:

(f) Notification. Upon receipt of an application, CTCAC shall notify the Chief Executive Officer (e g., city manager, county administrative officer, tribal chairperson) of the local jurisdiction within which the proposed project is located and provide such individual an opportunity to comment on the proposed project (IRC Section 42(m)(1)(ii)).

Reason:

This change adds a reference to the tribal equivalent of the local jurisdiction's chief executive officer, and complements the Native American pilot apportionment proposed at Section 10315(c)(2).

Section 10315

Proposed Change:

Section 10315. Set-asides and Apportionments

CTCAC shall review each competitive application applying as an at-risk or special needs housing type under subsection (h) below, first, within that housing type's relevant set-aside. In addition, applicants competing within either the At-risk or Special Needs set-aside shall be considered as that housing type for purposes of paragraph (g).

Reason:

The first change would create an introductory provision requiring applications proposing specific housing types to compete, first, within the relevant set-aside for that housing type. The set-asides establish priority project-types and are intended to fund the highest quality competitors within those housing types. However, some applicants forgo competing within a relevant set-aside and compete only within their geographic region. As a result, less meritorious (lower scoring) applications occasionally win in the set-asides, while a higher scoring application of the same housing type loses in the regional competition.

The second change would count winning projects in the At-risk or Special Needs set asides as those set-asides' housing type for purposes of paragraph (g) (currently paragraph (h) in Section 10315, but proposed for change to paragraph (g)), even where the applicant declares the project as another housing type (e.g., large family, or senior housing). This would more appropriately account for the full variety of housing types in scoring the first tiebreaker (Section 10325(c)(4) and (c)(10)). As a practical matter, it would more frequently count as at-risk or special needs projects currently counted as senior or large family.

For example, an at-risk senior project winning in the at-risk set-aside would count as an at-risk award for purposes of the first tiebreaker, rather than as a senior project. However, the project could still receive points elsewhere in the scoring system as a senior project (e.g., for proximity to a senior center under Section 10325(c)(5)(A)(6)).

Section 10315(b)

Proposed Change:

(a) Nonprofit set-aside. Ten percent (10%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects involving, over the entire restricted use period, Qualified Nonprofit Organizations as the only general partners and developers, as defined by these regulations, and in accordance with IRC Section (42)(h)(5).

(b) Each funding round, credits available in the Nonprofit set-aside shall be made available as a first-priority, to projects providing housing to homeless households at affordable rents, consistent with Section 10325(g)(4)(A) and (D) in the following priority order:

- First, projects with McKinney Act, State Supportive Housing Program funding committed, or Mental Health Services Act (MHSA) funding committed or anticipated.
- Second, projects with rental or operating assistance funding commitments from federal, state, or local governmental funding sources. The rental assistance must be sponsor-based or project-based and the remaining term of the project-based assistance contract shall be no less than one (1) year and shall apply to no less than fifty percent (50%) of the units in the proposed project. For local government funding sources, ongoing assistance may be in the form of a letter of intent from the governmental entity.
- Other qualified homeless assistance projects.

To compete as a homeless assistance project, at least fifty percent (50%) of the units within the project must ~~house~~ be designated for households as follows:

~~(1) Moving from an emergency shelter; or~~

~~(2) Moving from transitional housing; or~~

~~(3) Currently homeless which means:~~

~~(A) An individual who lacks a fixed, regular, and adequate nighttime residence; or~~

~~(B) An individual who has a primary nighttime residence that is:~~
~~(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and Transitional Housing for the mentally ill); or~~
~~(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or~~
~~(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.~~

(1) Individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
(A) Has a primary nighttime residence that is a public or private place not meant for human habitation;
(B) Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional

housing, and hotels and motels paid for by charitable organizations or by federal, state, and local government programs); or

(C) Is exiting an institution where (s)he has resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution.

(2) Individual or family who will imminently lose their primary nighttime residence, provided that:

(A) Residence will be lost within 14 days of the date of application for homeless assistance;

(B) No subsequent residence has been identified; and

(C) The individual or family lacks the resources or support networks needed to obtain other permanent housing.

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(A) Are defined as homeless under the other listed federal statutes;

(B) Have not had a lease, ownership interest, or occupancy agreement in permanent housing during the 60 days prior to the homeless assistance application;

(C) Have experienced persistent instability as measured by two moves or more during the preceding 60 days; and

(D) Can be expected to continue in such status for an extended period of time due to special needs or barriers.

(4) Any individual or family who:

(A) Is fleeing, or is attempting to flee, domestic violence;

(B) Has no other residence; and

(C) Lacks the resources or support networks to obtain other permanent housing.

Any amount of Tax Credits not reserved for homeless assistance projects during a reservation cycle shall be available for other applications qualified under the Non-profit set-side.

Reason:

TCAC's current description of homelessness was drawn from a previous "McKinney-Vento Homeless Assistance Act" definition, and no longer aligns with federal policy. The proposed definition contains four categories of homelessness associated with the federal "Homeless Emergency Assistance and Rapid Transition to Housing Act of 2009" (HEARTH Act).

Aligning TCAC's definition with the federal standard established by HUD eliminates confusion and disagreements among complementary funding sources. While TCAC is concerned about the impacts of the 90-day limitation on those exiting an institution, TCAC's proposal incorporates that provision in the interest of consistency.

Section 10315(c) and (d)

Proposed Change:

(c) Rural set-aside. Twenty percent (20%) of the Federal Credit Ceiling for any calendar (c)(in rural areas as defined in H & S Code Section 50199.21 and as identified in supplemental application material prepared by CTCAC. For purposes of implementing Section 50199.21(a), an area is eligible under the Section 515 program on January 1 of the calendar year in question if it either resides on the Section 515 designated places list in effect the prior September 30, or is so designated in writing by the USDA Multifamily Housing Program Director. All Projects located in eligible census tracts defined by this Section must compete in the rural set-aside and will not be eligible to compete in other set-asides or in the geographic areas unless~~:~~

~~(1) They qualify and choose to compete in the At-risk set-aside, in which case they will no longer be considered rural and will be evaluated as non-rural projects for purposes of these regulations; or~~

~~(2)~~ ~~The~~ the Geographic Region in which they are located has had no other Eligible Projects for reservation within the current calendar year.~~, in which case~~ In such cases the rural project may receive a reservation in the last round for the year, from the geographic region in which it is located, if any.

~~(d)~~ (1) RHS and HOME program apportionment. In each reservation cycle, fourteen percent (14%) of the rural set-aside shall be available for new construction projects which have a funding commitment from RHS of at least $1,000,000 from either RHS's Section 514 Farm Labor Housing Loan Program, or RHS's Section 515 Rural Rental Housing Loan Program, in the following priority order:

- First, to projects with RHS or HOME funding commitments accompanied by an "obligation" (as that term is used by RHS) of Section 521 Rental Assistance, or other committed rental assistance for at least 50% of the project units (excluding non-restricted management units);
- Second, to projects for which the Section 514, or 515, funding commitment is an "obligation" (as that term is used by RHS), or for HOME reservations issued by the relevant Participating Jurisdiction;
- Third, to projects for which the Section 514, or 515, funding commitment is a "NOFA selection for further processing" but not an "obligation" (as those terms are used by RHS.)

All projects meeting the RHS program apportionment eligibility requirements shall compete under the RHS program apportionment. Projects that are unsuccessful under the apportionment shall then compete within the general rural set-aside described in subsection (c). Any amount reserved under this subsection for which RHS funding does not become available in the calendar year in which the reservation is made, or any amount of Credit apportioned by this subsection and not reserved during a reservation cycle shall be available for applications qualified under the Rural set-aside.

(2) Native American pilot apportionment. In each of the 2014 and 2015 program years, one million dollars ($1 million) in annual federal credits shall be available

for applications proposing projects on land held in trust or to be held in trust by a Native American Tribe. Apportioned dollars shall be awarded to projects sponsored by Tribes using the scoring criteria in Section 10325(c), and achieving the minimum score established by TCAC under Section 10305(h). In addition, tribal communities shall partner with a developer and with a property management entity that would garner the maximum points available for General Partner/Management Company Characteristics under Section 10325(c)(2).

Reason:

The first change would eliminate the option for rural at-risk projects to compete in the rural set-aside. The California Tax Credit Allocation Committee (TCAC) has been awarding credits to successfully competing at-risk projects in the general rural set-aside for the past several years. For example, in 2011, four (4) of 24 rural set-aside awards were to at-risk projects (16.6% of the entire rural set-aside). In 2012 that number was 4 of 23 (17.3% of the set-aside, and in 2013 it was five (5) of 20 (25% of the set-aside).

The recent success rate of at-risk projects in the rural set-aside illustrates that such housing type projects do not have a competitive disadvantage in that set-aside. Therefore, an additional accommodation outside of the rural set-aside is no longer warranted. This is especially true with the competitive value of a project assuming existing public debt and the relatively large percentage of credits set aside for rural projects generally.

A non-substantive change would renumber the RHS apportionment paragraph as (1) under subsection (c), "Rural set-aside."

A second substantive change would add HOME funding to the RHS apportionment. This would acknowledge the value of both federal RHS and HOME funds in rural new construction projects. With a current dearth of Section 515 funding nationally, federal HOME funds are increasingly a critical source for increasing rural affordable housing supplies. Placing HOME funding on equal status with RHS funding is sound public policy in California rural areas.

The third proposed substantive change would establish a two-year pilot program to fund projects within federally recognized California Native American communities. The State of California has yet to award Low Income Housing Tax Credits for a project on Native American tribal land. By setting aside each year $1 million in rural set-aside annual credits for this pilot program, California would almost assuredly fund at least one award Native American tribal project each year.

TCAC staff proposes drawing the credits from the rural set-aside since that is where virtually all of California's tribal communities reside. Any projects within non-rural tribal communities may compete within other set-asides or geographic apportionments under current regulations.

The proposed regulation would have TCAC use the current competitive scoring system for nine percent (9%) credits to comparatively rate Native American tribal applications against one another. In addition, the proposed rule would require that tribal applicants earn full points for general partner and tax credit property management experience by partnering with an experienced tax credit housing developer and operator, and with an experienced tax credit property management entity. This additional requirement would ensure the successful development and operation of projects awarded credits through the pilot program.

Section 10315(e) - (j)

Proposed Change:

~~(e)~~(d) "At-Risk" set-aside. Five percent (5%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set aside for projects that qualify and apply as an "At risk" housing type pursuant to ~~these regulations~~ subsection (g) below. ~~Awards to rural projects electing to compete outside of the rural set-aside pursuant to Section 10315(c)(1) shall be limited to no more than 20 percent (20%) of the annual at-risk set-aside as of February first. Notwithstanding this limitation, CTCAC shall make an award to such a rural project if one unreserved dollar remains under the 20% limitation.~~

~~(f)~~(e) Special Needs~~/SRO~~ set-aside. Four percent (4%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be set-aside for projects that qualify and apply as a Special Needs ~~or Single Room Occupancy~~ housing type project~~s~~ pursuant to these regulations. Any proposed homeless assistance project that applies and is eligible under the Nonprofit Set Aside, but is not ~~funded~~ awarded credits from that set-aside, ~~will~~ shall be eligible to be considered under this Special Needs~~/SRO~~ set-aside.

~~(g)~~(f) Supplemental Set-Aside. An amount equal to three percent (3%) of the Federal Credit Ceiling for any calendar year, calculated as of February first of the calendar year, shall be held back to fund overages that occur in the second funding round set-asides and/or in the Geographic Apportionments because of funding projects in excess of the amounts available to those Set Asides or Geographic Apportionments, the funding of large projects, such as HOPE VI projects,or other Waiting List or priority projects. In addition to this initial funding, returned Tax Credits and unused Tax Credits from Set Asides and Geographic Apportionments will be added to this Supplemental Set Aside, and used to fund projects at year end so as to avoid loss of access to National Pool credits.

~~(h)~~(g) Housing types. To be eligible for Tax Credits, all applicants must select and compete in only one of the categories listed below and must meet the applicable "additional threshold requirements" of Section 10325(g), in addition to the Basic Threshold Requirements in 10325(f). The Committee will employ the tiebreaker at Section 10325(c)(10) in an effort to assure that no single housing type will exceed the following percentage goals where other housing type maximums are not yet reached:

Housing Type	**Goal**
Large Family	65%
Single Room Occupancy	15%
At-Risk	15%
Special Needs	15%
Seniors	15%

~~(i)~~(h) Geographic Apportionments. Annual apportionments of Federal and State Credit Ceiling shall be made in approximately the amounts shown below:

Geographic Area Apportionments	~~**2013**~~	~~**2014 Onward**~~
City of Los Angeles	~~16.7%~~	17.6%
Balance of Los Angeles County	~~16.3%~~	17.2%
North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)		10.8%
Central Valley Region (Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus, Tulare Counties)	~~10%~~	8.6%
~~North and East Bay Region (Alameda, Contra Costa, Marin, Napa, Solano, Sonoma Counties)~~	~~10%~~	~~10.8%~~
San Diego County	~~10%~~	8.6%
Inland Empire Region (San Bernardino, Riverside, Imperial Counties)	~~8%~~	8.3%
Orange County	~~8%~~	7.3%
Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)		6.7%
South and West Bay Region (San Mateo, Santa Clara Counties)	~~6%~~	6.0%
~~Capital and Northern Region (Butte, El Dorado, Placer, Sacramento, Shasta, Sutter, Yuba, Yolo Counties)~~	~~6%~~	~~6.7%~~
Central Coast Region (Monterey, San Luis Obispo, Santa Barbara, Santa Cruz, Ventura Counties)	~~5%~~	5.2%
San Francisco County	~~4%~~	3.7%

~~(j)~~(i) Credit available for geographic apportionments. Geographic apportionments, as described in this Section, shall be determined prior to, and made available during each reservation cycle in the approximate percentages of the total Federal and State Credit Ceiling available pursuant to Subsection 10310(b), after CTCAC deducts the federal credits set aside in accordance with Section 10315(a) through (h) from the annual Credit Ceiling.

Reason:

A non-substantive set of changes would re-letter subsequent paragraphs affected by the earlier-proposed RHS apportionment re-numbering.

The next proposed change would conform paragraph (d) with the new proposed requirement (the first listed change to Section 10315 above) that at-risk housing type applications would first be considered within the at-risk set-aside competition. The second change to paragraph (d) would conform to the substantive change at paragraph (c) above eliminating the option for rural projects to compete in the at-risk set-aside.

The proposed substantive change at paragraph (e) would remove SRO from the set-aside, changing the set-aside to be for qualifying Special Needs project applications only. TCAC has seen non-special needs SRO applications that should be able to compete effectively within their regional competitions. When originally grouped with special needs housing, SROs were generally understood to house homeless or other special needs populations. Under the proposed change, an SRO-configured property would only qualify for this set-aside if housing special needs households in conformance with Section 10325(g)(4).

Finally, paragraph (i), which would be relisted as paragraph (h), would eliminate the now historic 2013 apportionments and would re-order the regions to conform to the descending percentage protocol of existing regulations. The re-ordering would reflect the fact that two regions move up the list order relative to their prior locations on the list.

Section 10317(a) – (j)

Proposed Change:

Section 10317. State Tax Credit Eligibility Requirements

(a) General. In accordance with the R & T Code Sections 12205, 12206, 17057.5, 17058, 23610.4 and 23610.5, there shall be allowed as a Credit against the "tax" (as defined by R & T Code Section 12201) a State Tax Credit in an amount equal to ~~the amount determined in the Revenue and Taxation Code,~~ no more than 30 percent (30%) of a credit ceiling project's requested construction-related eligible basis. The maximum State Tax Credit award amount for a tax exempt bond project, or basis described in paragraph (f) below, is 13 percent (13%) of that project's requested eligible basis. Award amounts shall be computed in accordance with IRC Section 42, except as otherwise provided in applicable sections of the R & T Code.

(b) Allocation of Federal Tax Credits required. State Tax Credit recipients shall have first been awarded Federal Tax Credits, or shall qualify for Tax Credits under Section 42(h)(4)(b), as required under H & S Code Section 50199.14(e) and the R & T Code Section 12206(b)(1)(A). State Farmworker Credits are exempt from this requirement.

(c) Limit on Credit amount. ~~The combined amount of Federal and State Tax Credits allocated to a building shall be limited to the lesser of the amount of State Credits pursuant to R & T Code Section 12206(c) plus the amount of Federal Tax Credits allocated under Section 42 computed on one hundred percent (100%) of the qualified basis of the building, or the amount sufficient for financial feasibility.~~

~~(d) Credit Ceiling Applications.~~ Except for Special Needs applications described in paragraph (d) below, all credit ceiling applications may request State credits provided the project application is not requesting the federal 130% basis adjustment for purposes of calculating the federal credit award amount. Projects are eligible for State credits regardless of their location within a federal Qualified Census Tract (QCT) or a Difficult Development Area

(DDA). ~~Applicants not eligible for the 130% basis adjustment may apply for an allocation of State credits in addition to federal Credit Ceiling credits. In addition, applicant projects eligible for the federal basis adjustment may elect to forgo the federal adjustment and apply for State credits in addition to the requested federal credits.~~

(d) Under authority granted by Revenue and Taxation Code Sections 12206(b)(2)(F)(ii), 17058(b)(2)(E)(ii), and 23610.5(b)(2)(E)(ii), applications for Special Needs projects within a QCT or DDA may request the federal 130% basis boost and may also request State credits. Under authority granted by Internal Revenue Code Section 42(d)(5)(B)(v), CTCAC designates Special Needs housing type applicants for credit ceiling credits as Difficult Development Area projects, regardless of their location within a federally-designated QCT or DDA.

Reason:

Paragraph (a): The proposed change would more clearly state the maximum State credit award amount as established in State statute. Thirty percent (30%) of requested construction-related eligible basis has been long-standing practice for 9% applications as established in statute.

Paragraphs (c) and (d): Proposed changes would eliminate existing confusing language in paragraph (c) and provide guidance for 9% applicants in a single, combined paragraph. Proposed language would indicate, by reference, an exception to the general limitation when combining federal and State credits within a Special Needs project. Paragraph (c) would continue to establish the general rule, while paragraph (d) would establish the Special Needs exceptions.

New paragraph (d): The proposed change would incorporate new statutory authority established by AB 952 (Atkins, Chapter 771, Stats. of 2013) providing basis-boosted federal credits and State credits to Special Needs projects in Difficult Development Areas (DDAs) and Qualified Census Tracts (QCTs). The proposed paragraph would also designate Special Needs projects outside of federally-designated DDAs and QCTs as DDAs for purposes of calculating federal credit ceiling award amounts. This latter DDA designation would not apply to 4% credit applications since TCAC has federal DDA authority only with regards to credit ceiling projects.

This would effectively consider all Special Needs applicants for 9% credits as DDAs regardless of their location, and would avail those projects of both basis-boosted federal credits and State credits. By exercising its federal authority to designate non-DDA and non-QCT area Special Needs 9% projects as DDA projects, TCAC would put such projects on par with DDA and QCT Special Needs located within federally-designated DDAs and QCTs. In this way, high-value projects housing homeless populations and other Special Needs populations could access full federal credit and State credit awards.

Special Needs projects are a high public policy priority in TCAC's scoring scheme, and such projects have become increasingly difficult to finance. The absence of local redevelopment funding and State affordable housing subsidies, along with reduced federal resources could be offset, in part, with additional equity brought by the proposed changes.

Section 10320(b)

Proposed Change:

(b) Tax Credits and ownership transfers. No allocation of the Federal or State Credits, or ownership of a Tax Credit project, may be transferred without prior written approval of the Executive Director. Said approvals shall not be unreasonably withheld. In the event that prior written approval is not obtained, the Executive Director may assess negative points pursuant to section 10325(c)(3)(M), in addition to other remedies. The following requirements apply to all ownership or Tax Credit transfers requested after January 31, 2014.

(1) Any transfer of project ownership (including changes to any general partner, limited partner, member, or equivalent responsible party), or allocation of Tax Credits shall be evidenced by a written agreement between the parties to the transfer, including agreements entered into by the transferee and the Committee.

(2) The entity replacing a party or acquiring ownership or Tax Credits shall be subject to a "qualifications review" by the Committee to determine if sufficient project development and management experience is present for owning and operating a Tax Credit project. Information regarding the names of the purchaser(s) or transferee(s), and detailed information describing the experience and financial capacity of said persons, shall be provided to the Committee ~~upon request~~. Any general partner change during the 15-year federal compliance and extended use period must be to a party earning equal capacity points pursuant to Section 10325(c)(2)(A) as the exiting general partner. At a minimum this must be three (3) projects in service more than three years, or the demonstrated training required under Section 10326(g)(5). Two of the three projects must be Low Income Housing Tax Credit projects in California. If the new general partner does not meet these experience requirements, then substitution of general partner shall not be permitted.

Reason:

The proposed change clarifies that all projects allocated low income housing tax credits must comply with current regulation requirements of Section 10320(b). It also clarifies that the phrase "transfer of project ownership" refers to all parties in a project's ownership structure, including a limited partnership's general and limited partners. In addition, the TCAC qualifications review is proposed to include language that defines more specifically the experience required of the newly entering entity, including the importance of experience with the California tax credit program. It is proposed to include the extended use period of TCAC affordability restrictions in the ownership transfer requirements. Monitoring staff has noted the importance of an owner's knowledge of and experience with IRC Section 42 compliance during this period as fundamental to a project's ongoing compliance with the program requirements committed to at the time of the tax credit allocation.

Section 10322(d) - (f)

Proposed Change:

Section 10322. Application Requirements

(a) Separate Application. A separate application is required for each project.

(b) Application forms. Applications shall be submitted on forms provided by the Committee. Applicants shall submit the most current Committee forms and supplementary materials in a manner, format, and number prescribed by the Committee.

(c) Late application. Applications received after an application-filing deadline shall not be accepted.

(d) Incomplete application. Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline. Applications not meeting all Basic Threshold Requirements or relevant Additional Threshold (Housing Type) Requirements shown in Sections 10325(f) and (g) or any other application submission requirements described in these Regulations, shall be considered incomplete, and shall be disqualified from receiving a reservation of Tax Credits during the cycle in which the application was determined incomplete. An applicant shall be notified by the Committee should its application be deemed incomplete and the application will not be scored.

(e) Complete application. ~~Determination of completeness, compliance with all Basic and Additional Thresholds, and the scoring of the application shall be based entirely on the documents contained in the application as of the final filing deadline.~~ No additional documents pertaining to the Basic or Additional Threshold Requirements or scoring categories shall be accepted after the application-filing deadline unless the Executive Director, at his or her sole discretion, determines that the deficiency is a clear reproduction or application assembly error, or an obviously transposed number. In such cases, applicants shall be given up to five (5) business days from the date of receipt of staff notification, to submit said documents to complete the application. For threshold or scoring omissions other than reproduction or assembly errors, the Executive Director may request additional clarifying information from ~~third party~~ sources other than the applicant, developer or consultant, such as local government entities, but this is entirely at the Executive Director's discretion. ~~Applicants submitting applications with missing, incomplete or inconsistent documents not related to Basic or Additional Thresholds or scoring criteria described in Section 10325(c),~~ Upon the Executive Director's request, the information sources shall be given up to five (5) business days, from the date of receipt of staff notification, to submit said documents to ~~complete~~ clarify the application. The applicant may be required to certify that all evidentiary documents deemed to be missing from the application had been executed on or prior to, the application-filing deadline. If required documents are not submitted within the time provided, the application shall be considered incomplete and no appeal will be entertained.

(f) Application changes. ~~An application may not be changed, nor may any additional information with respect to scoring or meeting the Basic or Additional Threshold Requirements be submitted subsequent to the application filing deadline, except~~ Only the Committee may change an application as permitted by Section 10327(a). Any changes made by the Committee pursuant to Section 10327(a) shall never improve the

score of the application as submitted, and may reduce the application's score and/or credit amount.

Reason:

Paragraph (d): The proposed change would simply import an existing sentence from subsequent paragraph (e). Beginning the paragraphs discussing application completeness and changes with the declarative statement relative to the application deadline is more logical than establishing the rule in a later paragraph.

Paragraph (e): Besides moving the initial sentence to an earlier paragraph, the substantive changes in this paragraph begin by adding scoring omissions to the discussion of threshold omissions. A second change to that same sentence would state more clearly that TCAC could receive clarifying information from parties other than the developer or applicant. The new language would replace the term "third party" which left uncertain TCAC's ability to request clarifying information from the project's energy consultant, architect, or attorney.

Finally, the same sentence in paragraph (e) would be amended to permit information that would "clarify" rather than complete an application. This term deliberately communicates that only where an original application references an item could TCAC choose to request additional, clarifying information. The regulation still would not permit the Executive Director to request missing information unless it is a clear reproduction or application assembly error.

Paragraph (f): Changes would remove redundant language, and new phrasing would clarify that no application changes are permitted other than those made by TCAC under authority of Section 10327(a). This reference allows TCAC to modify financial assumptions that conflict with TCAC regulations.

Section 10322(h)(9)

Proposed Change:

(9) Appraisals. Appraisals are required for all competitive applications except for tribal trust land and new construction projects that have third party purchase contracts or evidence of a purchase from a third party. If land is donated or leased from a public entity or available through a related party purchase, an appraisal is required to establish value for competitive scoring.

(A) Rehabilitation applications. An "as-is" appraisal prepared within 120 days before or after the execution of a purchase contract or the transfer of ownership by all the parties by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee, and that includes, at a minimum, the following:

(i) the highest and best use value of the proposed project as residential rental property;
(ii) the Sales Comparison Approach, and Income Approach valuation methodologies except in the case of an adaptive reuse or conversion, where the Cost Approach valuation methodology shall be used;

(iii) the appraiser's reconciled value except in the case of an adaptive reuse or conversion as mentioned in (ii) above;
(iv) a value for the land of the subject property "as if vacant";
(v) an on site inspection; and
(vi) a purchase contract verifying the sales price of the subject property.

The "as if vacant" land value and the existing improvement value established at application, as well as the eligible basis amount derived from those values will be used during all subsequent reviews including the placed in service review, for the purpose of determining the final award of Tax Credits.

(B) New construction applications. An "as-is" appraisal with a date of value that is within one year of the application date prepared by a California certified general appraiser having no identity of interest with the development's partner(s) or intended partner or general contractor, acceptable to the Committee.

All applications, including those funded with tax-exempt bond financing, must include a land cost or value in the Sources and Uses budget. A nominal cost will not be accepted, and costs shall be evidenced by sales agreements, purchase contracts, or appraisals. ~~If land is donated or leased from a public entity or in the absence of a third party purchase contract, an appraisal is required to establish value.~~ Tribal trust land is excluded from this requirement. However, existing improvement values must be supported by an appraisal pursuant to this section.

Reason:

Proposed changes would exclude tribal trust land from TCAC's appraisal requirements. Appraisals typically provide a market valuation of land and improvements. Tribal trust land is land held in trust by the federal government reserved for Native American tribes, and is not purchased or sold as a market transaction. Transfers of tribal trust land are comparatively rare and differ considerably from standard fee simple transactions. In tax credit applications where tribal trust land is leased to a project owner with a tribe holding the land in trust from the federal government, an appraised value is not relevant to the project's development budget. Tribal applicants proposing to rehabilitate existing improvements and requesting acquisition basis for these improvements are required to submit an appraisal that meets TCAC requirements.

An additional proposed change clarifies that all property acquisition costs must be substantiated through a submitted appraisal unless the property is acquired through a bona fide third-party purchase. These changes assure that property acquisition values are neither over-stated nor under-stated for competitive purposes or for basis calculation purposes. The proposed changes also move existing language from the final paragraph of Section 10322(h)(9) to the section's first paragraph.

Section 10322(h)(14)

Proposed Change:

(14) Identification of local jurisdiction. The following information related to the local jurisdiction within which the proposed project is located:

(A) Jurisdiction or Tribe (e.g., City of Sacramento)

(B) chief executive officer or Tribal chairperson and title (e.g., Susan Smith, City Manager)

(C) mailing address

(D) telephone number

(E) fax number

Reason:

This change adds a reference to tribal areas and the tribal equivalent of the local jurisdiction's chief executive officer.

Section 10322(h)(16)

Proposed Change:

(16) Financing plan. A detailed description of the financing plan, and proposed sources and uses of funds, to include construction, permanent, and bridge loan sources, and other fund sources, including rent or operating subsidies and reserves. The commitment status of all fund sources shall be described, and non-traditional financing arrangements shall be explained. Those projects with redevelopment-related project financing subject to Department of Finance (DOF) approval are required to provide within the CTCAC application a Final and Conclusive Determination Letter, or other written communication from DOF stating that DOF does not issue Final and Conclusive Determinations for this form of redevelopment financing obligation.

Reason:

With the uncertainty surrounding funds related to redevelopment agencies, it is in the best interest that the Committee not commit tax credits to projects who have not yet received final approval for the redevelopment-related funds from the DOF. The Committee will require that final approval has been received by the DOF prior to application submittal. The documentation will be required to be included in application.

Section 10322(h)(25)

Proposed Change:

(h) Standard application documents. The following documentation relevant to the proposed project is required to be submitted with all applications:

Note: Other than the proposed change above to subsection (9) and (14), items (h)(1) – (24) will remain unchanged.

(24) Self-scoring sheet as provided in the application.

(25) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:

(A) a chain of title report or, for tribal trust land, an attorney's opinion regarding chain of title;

(B) a third party tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,

(C) if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).

(26) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:

(A) an independent, third party appraisal prepared and submitted with the preliminary reservation application consistent with the guidelines in Section 10322(h)(9).

(B) a Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.

(C) in cases where the property to be acquired is already regulated by CTCAC or another public funding source, evidence within the preliminary reservation application (i) of any replacement reserve balance, and (ii) that any replacement reserve is being used for the rehabilitation and is not accruing to the benefit of the seller.

(27) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.

(28) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.

(29) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).

(30) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:

(A) IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;

(B) proof of designation as a nonprofit corporation under Heath and Safety Code Section 50091;

(C) proof that one of the exempt purposes of the corporation is to provide low-income housing;

(D) a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;

(E) a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,

(F) a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).

(31) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, shall provide verification that the proposed project is located in an eligible rural area. Evidence that project is located in an area eligible for Section 515 financing from RHS may be in the form of a letter from RHS's California state office.

(32) RHS Section 514, 515 or 538 program applications. Rural housing applicants requesting Tax Credits from amounts made available for projects financed by the RHS Section 514, 515, or 538 program shall submit evidence from RHS that such funding has been requested, obligated or committed as defined by RHS.

(33) HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.

Reason:

The proposed changes would move current items (i)(3) – (11) to the end of Section 10322(h), "Standard application documents." These items should not be listed in their current subsection (i) location since they are not "Additional Subsequent application documents." This very same list of items is being deleted from subsection (i) below.

A substantive change in new paragraph (h)(25)(A) would add language permitting an attorney's opinion rather than a chain of title report for a project on tribal trust land. The change would recognize that a chain of title report from a title insurance company may not be available for tribal trust land. As a substitution, an attorney's opinion of the chain of title would suffice as evidence of site control in such cases.

The only other substantive proposed changes in the relocated provisions above are in new paragraph (h)(26). The proposed change in paragraph (26)(A) would add "and submitted with the preliminary reservation application." This change would align with current TCAC practice requiring appraisals with the preliminary applications for rehabilitation projects. More substantively, TCAC proposes in new paragraph (26)(C) requiring disclosure of any replacement reserve balances within re-syndicating tax credit projects, and that those reserves are going toward the rehabilitation and not to the seller. Replacement reserves are intended to defray future repair and replacement costs associated with the property, and TCAC accounted for deposits to those reserves in its original project underwriting. Allowing a tax-credit assisted property owner to take the replacement reserves while a new (and frequently related) owner seeks additional credits is contrary to the effective use of federal housing assistance resources.

Section 10322(i)

Proposed Change:

~~(i) Additional Subsequent application documents. In addition to all above requirements of this Section, the following documentation relevant to the proposed project is required to be submitted with applications having certain characteristics, as described below:~~

~~(1) Final Reservation application. Applicants proposing a final reservation application shall provide the following unless previously submitted as a Readiness to Proceed requirement:~~

~~(A) an executed construction contract;~~

~~(B) recorded deeds of trust for all construction loan financing;~~

~~(C) a current title report (dated no later than 30 days before the application deadline or no earlier than January 1st of the year in which the building must be placed-in-service as provided in section 10328(c), whichever applies);~~

~~(D) binding commitments for permanent financing;~~

~~(E) binding commitments for any other financing required to complete project construction;~~

~~(F) a construction lender trade payment breakdown of approved construction costs; and,~~

~~(G) an executed partnership agreement, or if not yet executed, a commitment letter between the applicant and investor verifying the expected equity raise, pay-in schedule and costs of syndication;~~

~~(H) building permits;~~

~~(I) a completed updated application;~~

~~(J) a detailed explanation of any changes from the initial application; and~~

~~(K) an updated development timetable as of Final Reservation filing date.~~

~~The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.~~

~~(2)~~(i) Placed-in-service application. Within one year of completing construction of the proposed project, the applicant shall submit documentation including an executed regulatory agreement provided by CTCAC and the compliance monitoring fee required by Section 10335. CTCAC shall determine if all conditions of the reservation have been met. Changes subsequent to the initial application, particularly changes to the financing plan and costs or changes to the services amenities, must be explained by the applicant in detail. If all conditions have been met, tax forms will be issued, reflecting an amount of Tax Credits not to exceed the maximum amount permitted by these regulations. The following must be submitted:

~~(A)~~(1) certificates of occupancy for each building in the project (or a certificate of completion for rehabilitation projects). If acquisition Tax Credits are requested, evidence of the placed-in-service date for acquisition purposes, and evidence that all rehabilitation is completed;

~~(B)~~(2) an audited certification, prepared by an independent Certified Public Accountant under generally accepted auditing standards, with all disclosures and notes. ~~Effective July 1, 2013, the~~ The Certified Public Accountant (CPA) or accounting firm shall not have acted a manner that would impair independence as established by the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct Section 101 and the Securities and Exchange Commission (SEC) regulations 17 CFR Parts 210 and 240. Examples of such impairing services, when performed for the final cost certification client, include bookkeeping or other services relating to the accounting records, financial information systems design and implementation, appraisal or evaluation services, actuarial services, internal audit outsourcing services, management functions or

human resources, investment advisor, banking services, legal services, or expert services unrelated to the audit. Both the referenced SEC and AICPA rules shall apply to all public and private CPA firms providing the final audited cost certification. In order to perform audits of final cost certifications, the auditor must have a peer review of its accounting and auditing practice once every three years consistent with the AICPA Peer Review Program as required by the California Board of Accountancy for California licensed public accounting firms (including proprietors); and make the peer review report publicly available and submit a copy to CTCAC along with the final cost certification. If a peer review reflects systems deficiencies, CTCAC may require another CPA provide the final cost certification. This certification shall:

~~(1)~~(A) reflect all costs, in conformance with 26 CFR §1.42-17, expenditures and funds used for the project, as identified by the certified public accountant, up to the funding of the permanent loan. Projects developed with general contractors who are Related Parties to the developer must be audited to the subcontractor level; and

~~(2)~~(B) include a CTCAC provided Sources and Uses form reflecting actual total costs incurred up to the funding of the permanent loan.

~~(3)~~(C) certify that the CPA has not performed any services, as defined by AICPA and SEC rules, that would impair independence.

~~(C)~~(3) an itemized breakdown of placed-in-service dates, shown separately for each building, on a Committee-provided form. If the placed-in service date(s) denoted are different from the date(s) on the certificate(s) of occupancy, a detailed explanation is required;

~~(D)~~(4) photographs of the completed building(s);

~~(E)~~(5) a request for issuance of IRS Form(s) 8609 and/or FTB Form(s) 3521A;

~~(F)~~(6) a certification from the syndicator of equity raised and syndication costs in a Committee-provided format;

~~(G)~~(7) a project ownership profile on a Committee-provided form;

~~(H)~~(8) a sponsor-signed certification documenting the services currently being provided to the residents, including identifying service provider(s), describing services provided, stating services dollar value, and stating services funding source(s) (cash or in-kind), with attached copies of contracts and MOUs for services.

~~(I)~~(9) a copy of any cost certification submitted to, required by and/or and approved by RHS or any other lender;

~~(J)~~(10) a list of all amenities provided at the project site, and color photographs of the amenities. If the list differs from that submitted at application, an explanation must be provided. In addition, the sponsor must provide a list of any project amenities not included in basis for which the property owner intends to charge an optional fee to residents.

~~(K)~~(11) a description of any charges that may be paid by tenants in addition to rent, with an explanation of how such charges affect eligible basis;

~~(L)~~(12) if applicable, a certification from a third party tax professional stating the percentage of aggregate basis (including land) financed by tax exempt bonds for projects that received Tax Credits under the provisions of Section 10326 of these regulations;

~~(M)~~(13)all documentation required pursuant to the Compliance and Verification requirements of Sections 10325(f)(7) and 10326(g)(6);

~~(N)~~(14)all documents required pursuant to the Compliance and Verification requirements of Section 10327(c)(5)(B);

~~(0)~~(15)if seeking a reduction in the operating expenses used in the Committee's final underwriting pursuant to Section 10327(g)(1) of these regulations, the final operating expenses used by the lender and equity investor;

~~(P)~~(16)a certification from the project architect or, in the case of rehabilitation projects, from an architect retained for the purpose of this certification, that the physical buildings are in compliance with all applicable building codes and applicable fair housing laws. In the case of rehabilitation projects proceeding without an architect, the entity performing the Capital Needs Assessment shall note necessary fair housing improvements, and the applicant shall budget for and implement the related construction work;

~~(Q)~~(17)all documentation required pursuant to the Compliance and Verification requirements of Section 10325(c)(6), if applicable; and

~~(R)~~(18)a current utility allowance estimate as required by 26 CFR Section 1.42-10(c) and Section 10322(h)(21) of these regulations. Measures that are used in the CUAC that require field verification shall be verified by a certified HERS rater, in accordance with current HERS regulations.

(19) for tribal trust land, the lease agreement between the Tribe and the project owner.

The Executive Director may waive any of the above submission requirements if not applicable to the proposed project.

~~(3) Acquisition Tax Credits application. Applicants requesting acquisition Tax Credits shall provide:~~

~~a. a chain of title report;~~

~~b. a third party tax professional's opinion stating that the acquisition is either exempt from or meets the requirements of IRC Section 42(d)(2)(B)(ii) as to the 10-year placed-in-service rule; and,~~

~~c. if a waiver of the 10-year ownership rule is necessary, a letter from the appropriate Federal official that states that the proposed project qualifies for a waiver under IRC Section 42(d)(6).~~

(4) Rehabilitation application. Applicants proposing rehabilitation of an existing structure shall provide:

a. an independent, third party appraisal prepared consistent with the guidelines in Section 10322(h)(9).

(B) a Capital Needs Assessment ("CNA") performed within 180 days prior to the application deadline that details the condition and remaining useful life of the building's major structural components, all necessary work to be undertaken and its associated costs, as well as the nature of the work, distinguishing between immediate and long term repairs. The Capital Needs Assessment will also include a 15-year reserve study, indicating anticipated dates and costs of future replacements of all major building components that are not being replaced immediately, and the reserve contributions needed to fund those replacements. The CNA must be prepared by the project architect, as long as the project architect has no identity of interest with the developer, or a sponsor, or by a qualified independent 3rd party who has no identity of interest with any of the members of the Development Team. If a waiver of any requirement of the minimum construction standards delineated in section 10325(f)(7) and section 10326(g)(6) is requested, the assessment must show, to the satisfaction of the Executive Director, that meeting the requirement is unnecessary and financially burdensome, and that the money to be spent in rehabilitating other project features will result in a better end product.

Subsections (A) and (B) above shall not apply if the project previously received a reservation of Tax Credits and these requirements were met in the original application.

(5) Acquisition of Occupied Housing application. Applicants proposing acquisition of occupied rental residential housing shall provide income, rent and family size information for the current tenant population.

(6) Tenant relocation plan. Applicants proposing rehabilitation or demolition of occupied housing shall provide an explanation of the relocation requirements, and a detailed relocation plan including a budget with an identified funding source. Where existing low income tenants will receive a rent increase exceeding five percent (5%) of their current rent, applicants shall provide a relocation plan addressing economic displacement. Where applicable, the applicant shall provide evidence that the relocation plan is consistent with the Uniform Relocation Assistance and Real Property Acquisition Policy Act and has been submitted to the appropriate local agency.

(7) Owner-occupied Housing application. Applicants proposing owner-occupied housing projects of four units or less, involving acquisition or rehabilitation, shall provide evidence from an appropriate official substantiating that the building is part of a development plan of action sponsored by a State or local government or a qualified nonprofit organization (IRC Section 42(i)(3)(E)).

(8) Nonprofit Set-Aside application. Applicants requesting Tax Credits from the Nonprofit set-aside, as defined by IRC Section 42(h)(5), shall provide the following documentation with respect to each developer and general partner of the proposed owner:

a. IRS documentation of designation as a 501(c)(3) or 501(c)(4) corporation;

~~b. proof of designation as a nonprofit corporation under Heath and Safety Code Section 50091;~~

~~c. proof that one of the exempt purposes of the corporation is to provide low-income housing;~~

~~d. a detailed description of the nonprofit participation in the development and ongoing operations of the proposed project, as well as an agreement to provide CTCAC with annual certifications verifying continued involvement;~~

~~e. a third party legal opinion verifying that the nonprofit organization is not affiliated with, controlled by, or party to interlocking directorates with any Related Party of a for-profit organization, and the basis for said determination; and,~~

~~f. a third party legal opinion certifying that the applicant is eligible for the Nonprofit Set-Aside pursuant to IRC Section 42(h)(5).~~

~~(9) Rural Set-Aside application. Applicants requesting Tax Credits from the Rural set-aside, as defined by H & S Code Section 50199.21 and Section 10315(c) of these regulations, shall provide verification that the proposed project is located in an eligible rural area. Evidence that project is located in an area eligible for Section 515 financing from RHS may be in the form of a letter from RHS's California state office.~~

~~(10) RHS Section 514, 515 or 538 program applications. Rural housing applicants requesting Tax Credits from amounts made available for projects financed by the RHS Section 514, 515, or 538 program shall submit evidence from RHS that such funding has been requested, obligated or committed as defined by RHS.~~

~~(11) HOME funds match. Applicants requesting State Tax Credits to match HOME funds shall provide a letter from the local jurisdiction stating why local matching funds are not being provided.~~

Reason:

The proposed changes would:

(a) eliminate the Final Reservation submittal requirement;

(b) remove an historic start date for the requirement within existing paragraph (2)(B) - to be renumbered (i)(2); and

(c) move application items (i)(3) through (11) to the application subsection (h).

In essence, subsection 10322(i) would become a placed-in-service subsection within the regulations while TCAC would eliminate the final reservation program feature. TCAC would continue to meet its federal obligation to determine that the credit dollar amount is not excessive at three different points in the application and development process: preliminary reservation application, the 180-day readiness deadline, and at the placed-in-service stage (IRC §42.(m)(2)(C)).

Moving items (i)(3) through (11) to the "standard application documents" discussion at subsection 10322(h) would appropriately describe application submittal requirements where they belong, as opposed to the current location under "additional subsequent application documents."

A final substantive change would establish a new provision (i)(19) requiring a lease agreement between a tribal community and the project owner. At the application stage tribal applicants would provide a title status report (see Section 10325(f)(2) below). The applicant general partner may be a tribal entity holding title to the project site. However, if a tribal applicant subsequently forms a limited partnership (or similar entity) and enters into a lease agreement, the partnership's site control must be evidenced by an executed lease agreement. This documentation should be provided in the placed in service package submitted to TCAC.

Section 10322(j)

Proposed Change:

(j) Re-application. Proposals submitted under Section 10326 of these regulations do not require new applications for minor changes in costs or Tax Credits alone. Committee staff will normally adjust the Credit amount for projects requesting Tax Credit increases under Section 10326 only at one time, when the placed-in-service package is received and reviewed by Committee staff. However, reapplication is required and applications will be reviewed if the Executive Director deems it necessary to have the Committee take formal action due to substantial changes or an extraordinary increase in Tax Credits requested. ~~For applications initially approved after February 1, 2005,~~ "Substantial changes" for this purpose will mean any significant change in unit mix, number of buildings or building layout, or development cost increases greater than 20% of the original costs, and an "extraordinary increase" in Tax Credits will mean an increase greater than 15% of the original reservation amount. It is the applicant's responsibility to notify CTCAC of any such changes and when CTCAC is notified accordingly, new applications may be required. Reapplications at placed-in-service that are requesting additional Tax Credits will be required to submit a fee equal to one percent (1%) of the first year's credit amount. For all other projects, except in unusual, extreme cases such as fire, or act of God, where a waiver of this subsection is permitted by the Executive Director, a re-application for a development that has already received a Tax Credit reservation or allocation shall be evaluated as an entirely new application, and shall be required to return its previously reserved or allocated Tax Credits prior to or simultaneously with its new application. All re-applications shall be subject to negative points under Section 10325(c)(3) if applicable (for example, a project that does not meet the original placed-in-service deadline would receive negative points hereunder). Re-applications shall be subject to the regulations in effect at the time the re-application is submitted. For projects submitted under Section 10326 of these regulations that are requesting additional Tax Credits, the basis limits to be used in the final underwriting shall be those in effect during the year the development is placed-in-service.

Reason:

The proposed change would simply remove the historic start date for the requirement.

Section 10325(c)(1)(C)

Proposed Change:

(C) Public funds. For purposes of scoring, "public funds" include federal, state, or local government funds, including the outstanding principal balances of prior existing public

debt or subsidized debt that has been or will be assumed in the course of an acquisition/rehabilitation transaction. Outstanding principal balances shall not include any accrued interest on assumed loans even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.

In addition, public funds include funds from a local community foundation, funds already awarded under the Affordable Housing Program of the Federal Home Loan Bank (AHP)**,** waivers resulting in quantifiable cost savings that are not required by federal or state law, or the value of land donated or leased by a public entity or donated as part of an inclusionary housing ordinance which has been in effect for at least one year prior to the application deadline. Private loans that are guaranteed by a public entity (for example, RHS Section 538 guaranteed financing) shall not be scored as public funds under this scoring factor. Current land and building values, including for land donated or leased by a public entity or donated as part of an inclusionary housing ordinance or other development agreements negotiated between public entities and private developers, must be supported by an independent, third party appraisal, conducted within one year of the tax credit application, and otherwise consistent with the guidelines in Section 10322(h)(9). Building values shall be considered only if those existing buildings are to be retained for the project, and the appraised value is not to include off-site improvements. All such public fund commitments shall receive 1 point for each 1 percent of the total development cost funded. For Tribal pilot apportionment applications, land purchased with public funds shall not be eligible for public funds points.

To receive points under this subsection for loans, those loans must be "soft" loans, having terms (or remaining terms) ~~in excess~~ of at least 15 years, and below market interest rates and interest accruals, or residual receipts payments for at least the first fifteen years of their terms. The maximum below-market interest rate allowed for scoring purposes shall be four percent (4%) simple, or the Applicable Federal Rate if compounding. RHS Section 514 or 515 financing shall be considered soft debt for scoring purposes in spite of a debt service requirement. Further, for points to be awarded under this subsection, there shall be conclusive evidence presented that any new public funds have been firmly committed to the proposed project and require no further approvals, and that there has been no consideration other than the proposed housing given by anyone connected to the project, for the funds or the donated or leased land.

Public contributions of off-site costs shall not be counted competitively, unless (1) documented as a waived fee pursuant to a nexus study and relevant State Government Code provisions regulating such fees or (2) the off-sites must be developed by the sponsor as a condition of local approval and those off-sites consist solely of utility connections, and curbs, gutters, and sidewalks immediately bordering the property.

~~Only the principal balances of prior publicly funded or subsidized loans to be assumed in the course of a proposed acquisition shall be scored competitively. Accrued interest shall not be considered in scoring assumed public debt, even where the original interest has been or is being recast as principal under a new loan agreement. Public funds points shall only be awarded for assumed principal balances only upon documented approval of the loan assumption or other required procedure by the public agency holding the promissory note.~~

Private "tranche B" loans underwritten based upon rent differentials attributable to rent subsidies shall also be considered public funding for purposes of the final tiebreaker. The amount of private loan counted for scoring purposes would be the lesser of the private lender commitment amount, or an amount based upon CTCAC underwriting standards. Standards shall include a 15-year loan term; an interest rate established annually by CTCAC based upon a spread over 10-year Treasury Bill rates; a 1.15 to 1 debt service coverage ratio; and a five percent (5%) vacancy rate. In addition, the rental income differential for subsidized units shall be established by subtracting tax credit rental income at 50 percent (50%) AMI levels (40% AMI for Special Needs/SRO projects or for Special Needs units within a mixed-population project) from the anticipated contract rent income documented by the subsidy source.

Reason:

The proposed change would eliminate redundancy by consolidating the regulation's discussion of how TCAC scores assumed public debt.

An additional change would ensure that applicants competing in the tribal pilot apportionment are not disadvantaged by submitting applications for projects located on tribal trust land. Since tribal trust land will have no value in the development budget, a tribe purchasing off-reservation land with public funding could have a competitive advantage over tribes choosing to build low income housing on tribal reservations. The proposed regulation is intended to ensure a more equitable competition between tribal projects located on and off tribal trust lands.

Section 10325(c)(2)

Proposed Change:

(2) General Partner/Management Company Characteristics.

No one general partner, party having any fiduciary responsibilities, or related parties will be awarded more than 15% of the Federal Credit Ceiling, calculated as of February first during any calendar year unless imposing this requirement would prevent allocation of all of the available Credit Ceiling.

(A) General partner experience. To receive points under this subsection for projects in existence for over 3 years, the proposed general partners, or a key person within the proposed general partner organization, must meet the following conditions:

(i) For projects in operation for over three years, submit a certification from a third party certified public accountant that the projects for which it is requesting points have maintained a positive operating cash flow, from typical residential income alone (e.g. rents, rental subsidies, late fees, forfeited deposits, etc.) for the year in which each development's last financial statement has been prepared (which must be effective no more than one year prior to the application deadline) and have funded reserves in accordance with the partnership agreement and any applicable loan documents. To obtain points for projects previously owned by the proposed general partner, a similar certification must be submitted with respect to the last full year of ownership by the proposed general partner, along with verification of the number of years that the project was owned by that general partner. To obtain points for projects previously owned, the ending date of ownership or participation must be no more than 10 years from the application deadline. This certification must list the specific projects for which the points are being requested. The certification of the third party certified public accountant may be in the form of an agreed upon procedure report that includes funded reserves as of the report date, which shall be dated within 60 days of the application deadline. Where there is more than 1 general partner, experience points may not be aggregated; rather, points will be awarded based on the highest points for which 1 general partner is eligible.

~~3-6 projects in service less than 3 years~~	~~3 points~~
3-6 projects in service more than 3 years	4 points
~~7 or more projects in service less than 3 years~~	~~5 points~~
7 or more projects in service more than 3 years	6 points

For projects applying through the Nonprofit set-aside or Special Needs set-aside only, points are available for special needs housing type projects only as follows:

~~3 projects in service less than 3 years~~	~~3 points~~
3 Special Needs projects in service more than 3 years	4 points
~~4 or more projects in service less than 3 years~~	~~5 points~~
4 or more Special Needs projects in service more than 3 years	6 points

(ii) General partners with fewer than two (2) active California Low Income Housing Tax Credit projects in service more than three years, and general partners for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit ~~tax credit~~ projects in service more than three years, shall ~~partner~~ contract with a bona-fide management company currently operating two (2) California Low Income Housing Tax Credit ~~tax credit~~ projects ~~in California~~ in service more than three years and which itself earns a minimum ~~combined~~ total of ~~three (3)~~ two (2) points at the time of application.

In applying for and receiving points in this category, applicants assure that the property shall be operated by a general partner in conformance with Section 10320(b)~~(2)~~.

(B) Management Company experience. To receive points under this subsection, the property management company must meet the following conditions:

(i)

~~6-10 projects in service under 3 years~~	~~1.5 points~~
6-10 projects in service over 3 years	2 points
~~11 or more projects in service under 3 years~~	~~2.5 points~~
11 or more projects in service over 3 years	3 points

For projects applying through the Nonprofit set-aside or Special Needs set-aside only, points are available for special needs housing type projects only as follows:

~~2-3 projects in service under 3 years~~	~~1.5 points~~
2-3 Special Needs projects in service over 3 years	2 points
~~4 or more projects in service under 3 years~~	~~1.5 points~~
4 or more Special Needs projects in service over 3 years	3 points

Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a low income housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.

(ii) Management companies with fewer than two (2) active California Low Income Housing Tax Credit projects ~~in California~~ in service more than 3 years, and management companies for projects applying through the Nonprofit or Special Needs set-aside with no active California Low Income Housing Tax Credit projects ~~in California~~ in service more than 3 years, shall ~~partner~~ contract with a bona-fide management company currently operating two (2) California Low Income Housing Tax Credit ~~tax credit~~ projects ~~in California~~ in service more than three years and which itself earns a minimum combined total ~~or three (3)~~ of two (2) points at the time of application.

~~In applying for and receiving points in this category, applicants assure that the property shall be managed by entities with equal experience scores for the entire 15-year federal compliance period.~~

When contracting with a California-experienced property management company under the terms of paragraph (A)(ii) or (B)(ii) above, the general partner or property co-management entity must obtain training in: project operations, on-site certification training in federal fair housing law, and manager certification in

IRS Section 42 program requirements from a CTCAC-approved, nationally recognized entity. Additionally, the experienced property management agent must remain for a period of at least 3 years from the placed-in-service date (or, for ownership transfers, 3 years from the sale or transfer date) to allow for at least one (1) CTCAC monitoring visit to ensure the project is in compliance with IRC Section 42. Thereafter, the experienced property manager may transfer responsibilities to the remaining general partner or property management firm following formal written approval from CTCAC.

In applying for and receiving points in these categories, applicants assure that the property shall be owned and managed by entities with equivalent experience scores for the entire 15-year federal compliance and extended use period, pursuant to Section 10320(b). The experience must include at least two (2) Low Income Housing Tax Credit projects in California in service more than 3 years.

Points in subsections (A) and (B) above will be awarded in the highest applicable category and are not cumulative. For points to be awarded in subsection (B), an enforceable management agreement executed by both parties for the subject application must be submitted at the time of application. "Projects" as used in subsections (A) and (B) means multifamily rental affordable developments of over 10 units that are subject to a recorded regulatory agreement, or, in the case of housing on tribal lands, where federal HUD funds have been utilized in affordable rental developments. General Partner and Management Company experience points may be given based on the experience of the principals involved, or on the experience of municipalities or other nonprofit entities that have experience but have formed single-asset entities for each project in which they have participated, notwithstanding that the entity itself would not otherwise be eligible for such points. For qualifying experience, "principal" is defined as an individual overseeing the day-to-day operations of affordable rental projects such as an Executive Director for General Partner experience or a Director of Compliance for Management Company experience. ~~Alternatively, a management company that provides evidence that the agent to be assigned to the project (either on-site or with management responsibilities for the site) has been certified prior to the application deadline pursuant to a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee, may receive 2 points. These points may substitute for other management company experience but will not be awarded in addition to such points.~~

~~In applying for and receiving points in this category, applicants assure that the property shall be managed by entities with equal experience scores for the entire 15-year compliance period.~~

Reason:

The proposed changes to this section include minor changes to point scoring category options and clarification of existing language related to partnering between less experienced and experienced general partners and property management companies. The point categories for experience of less than three years are proposed to be eliminated for both general partners and management companies. As a practical matter, these categories are not currently used by applicants as point scoring options. In addition, staff finds a scoring system that awards more points for a larger number of projects in service less than three years illogical. For example, under this system a general partner with less than one year's experience owning ten tax credit projects garners more points than a general partner with ten years' experience owning five projects. The proposed changes would discontinue awarding points to an owner or property manager new to the TCAC program with little experience maintaining affordability restricted properties.

The proposed language clarifies that for less experienced entities proposing to joint venture with experienced organizations, the experienced entity is not required to be part of the ownership structure (the phrase "partner with" is proposed to be replaced by "contract with"). The proposed change also adds a minimum period of required experience with California low income housing tax credit projects (at least three years) and provides specific guidance for the necessary training to be undertaken by less experienced entities. It is expected that the experienced general partners and management companies will actively train the entities they have contracted with to ensure a commensurate level of management once the contract period has expired. TCAC must approve the transfer of responsibilities to the remaining general partner or management company.

Proposed new language would also provide a clearer definition of the existing reference to a "principal." Finally, existing language for the management company two-point category is proposed to be relocated to a more appropriate placement within the list of point category options.

Section 10325(c)(5)(B)

Proposed Change:

(B) Projects that provide high-quality services designed to improve the quality of life for tenants are eligible to receive points for service amenities. Services must be appropriate to meet the needs of the tenant population served and designed to generate positive changes in the lives of tenants, such as by increasing tenant knowledge of and access to available services, helping tenants maintain stability and prevent eviction, building life skills, increasing household income and assets, increasing health and well being, or improving the educational success of children and youth.

Except as provided below, in order to receive points in this category, physical space for service amenities must be available when the development is placed-in-service. Services space must be located inside the project and provide sufficient square footage, accessibility and privacy to accommodate the proposed services.

The amenities must be available within 6 months of the project's placed-in-service date. Applicants must commit that services shall be provided for a period of 10-years.

All services must be of a regular and ongoing nature and provided to tenants free of charge (except for day care services or any charges required by law). Services must be provided on-site except that projects may use off-site services within 1/2 mile of the development (1½ miles for Rural set-aside projects) provided that they have a written agreement with the service provider enabling the development's tenants to use the services free of charge (except for day care and any charges required by law) and that demonstrate that provision of on-site services would be duplicative. All organizations providing services for which the project is claiming service amenities points must have at least 24 months experience providing services to one of the target populations to be served by the project.

Reason:

TCAC staff has been informed that many Native American tribes offer high quality services in a centralized location but which may not be within ½ mile of a proposed affordable housing development. The proposed change recognizes that rural communities may have an established service-oriented location serving the area population to enhance stability, well-being, health, and educational success.

Section 10325(c)(6)(D) through (F)

Proposed Change:

(D) Rehabilitation Projects: The applicant commits to develop the project in accordance with the minimum requirements of any one of the following programs: Leadership in Energy & Environmental Design (LEED); GreenPoint Rated Existing Home Multifamily Program; or 2011 Enterprise Green Communities, to the extent it can be applied to existing multifamily building. 5 points

~~(D)~~(E) Rehabilitation Projects: The project will be rehabilitated to improve energy efficiency above the modeled energy consumption of the building(s) based on existing conditions. Points are awarded based on the building(s) percentage decrease in estimated ~~annual~~Time Dependent Valulation (TDV) energy use (or improvement in energy efficiency) ~~in the building's Home Energy Rating System II (HERS II) rating~~ post rehabilitation as demonstrated using the appropriate performance module of California Energy Commission (CEC) approved software (e.g., EnergyPro, Micropas):

Improvement Over Current	
15 percent	3 points
20 percent	5 points
25 percent	7 points
30 percent	10 points

(F) For projects receiving points under section 10325(c)(6)(D), applicants may be awarded points for committing to develop their project beyond the minimum requirements of the green building program chose in section 10325(c)(6)(D):

LEED		Silver	Gold
GreenPoint Rated	65	95	120
2011 Enterprise Green Communities		Moderate Rehabilitation	Substantial Rehabilitation
	2 points	3 points	5 points

~~(E)~~(G) Additional Rehabilitation Project Measures. For project's receiving points under section 10325(c)(6)(D) applicants may be awarded points for committing to developing, and/or managing, their project with one or more of the following:

Note: Other than the proposed renumbering change above, the Additional Rehabilitation Project Measures subsection will remain unchanged.

Reason:

The proposed changes add additional scoring options for rehabilitation projects under the Sustainable Building Methods point category (resulting in renumbering the subsections for rehabilitation projects) and also correct a reference to an energy analysis rating system in what is proposed as subsection (E). TCAC staff has been asked by developers to consider expanding sustainable building method point options available to rehabilitation projects. TCAC has consulted with energy analysts, and while this group continues to explore additional point options for both new construction and rehabilitation projects, TCAC staff is proposing new point categories for 2014 for rehabilitation projects committing to green building program requirements.

Under the new subsection (E), TCAC's current regulatory requirements for rehabilitation project energy efficiency improvements refer to a California Energy Commission (CEC) Home Energy Rating System (HERS) II rating or report. As the CEC does not have a rating system or report with this title, staff is proposing language which corrects the erroneous reference.

Section 10325(c)(6)(H)(1) through (5)

Proposed Change:

~~(F)~~(H) Compliance and Verification:

1. For preliminary reservation applications, applicants must include a certification from the project architect that the sustainable building methods of Section 10325(c)(6) have been incorporated into the project, if applicable. For applications incorporating the requirements of subsections (A) and (D) Green Communities option, and for applications incorporating the requirements of subsections (B), (E), and (G) above, applicants must include a completed Sustainable Building Method Workbook.

2. For placed-in-service applications to receive points under sections 10325(c)(6)(A) and (C) and sections 10325(c)(6)(D) and (F), the applicant must submit the appropriate required third party verification documentation showing the project has met the requirements for the relevant program.

3. For placed-in-service applications to receive points under section 10325(c)(6)(B), the applicant must submit a completed Sustainable Building Method Workbook and the appropriate California Energy Commission compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. This compliance form must be the output from the building(s) modeled "as built" and reflect all relevant changes that impact the building(s) energy efficiency that were made after the preliminary reservation application. The compliance form must be signed by a California Association of Building Energy Consultants (CABEC) Certified Energy Plans Examiner (CEPE). Documentation for measures that require verification by California Home Energy Rating System (HERS) Raters must also be submitted.

4. For placed-in-service applications to receive points under section10325(c)(6)(~~D~~E), the applicant must submit a completed Sustainable Building Method Workbook and the ~~California Energy Commission HERS II~~ energy consumption and analysis report from the appropriate performance module of CEC approved software, developed using the Home Energy Retrofit Coordinating Committee's multifamily auditing and analysis protocols, which shows the pre- and post- rehabilitation ~~HERS II~~ estimated ~~annual~~(TDV) energy use demonstrating the required improvement and is signed by a qualified HERS Rater.

5. For placed-in-service applications to receive points under section 10325(c)(6)(~~E~~G) the applicants must submit a completed

Sustainable Building Method Workbook and the following documentation:

(i) For projects including photovoltaic generation that offsets tenant loads, the applicant must submit a Multifamily Affordable Solar Home (MASH) Program field verification certification form signed by the project's solar contractor and a qualified HERS Rater, and a copy of the utility interconnection approval letter.

(ii) For sustainable building management practices implemented by appropriately trained onsite staff, the applicant must submit a copy of the energy management and maintenance manual, provide evidence onsite staff has been certified in green building operations and maintenance through the Building Performance Institute Multifamily Energy Efficient Building Operator or equivalent training, and submit the building commissioning plan drafted in accordance with the California Commissioning Collaborative's best practice recommendations for existing buildings or the GreenPoint Rated Multifamily Commissioning requirements. Owner certification of ongoing sustainable building management practices will be provided annually in accordance with Section 10337(c)(3)(A).

(iii) For sub-metered central hot water systems, the applicant must demonstrate compliance with CPUC regulations for hot water sub-metering and billing by submitting a copy of the Utility Service Agreement from project's local utility provider.

Reason:

The proposed changes to this section would correct cross-references to other regulation sections as a result of proposed changes and renumbering. The changes above also insert a reference to an existing application form (the Sustainable Building Method Workbook), and correct a reference to a required energy analysis report.

As detailed in the previous proposal above, TCAC is expanding the scoring options for rehabilitation projects under Section 10325(c)(6). As a result the Compliance and Verification subsection will be renumbered and its cross-references corrected.

TCAC published a Sustainable Building Method Workbook to assist project developers in implementing the energy efficiency and sustainable building method requirements of Sections 10325(c)(6) and 10325(f)(7). The underlying regulation sections were revised effective in 2011 and the workbook document was developed as guidance in response to numerous technical questions received by TCAC staff. Beginning in 2013, staff included the Sustainable Building Method Workbook as an application requirement. Staff is now proposing to specify this requirement in the relevant regulation sections, and to clarify when the workbook is not required. Since the basic requirements of building a project in compliance with the LEED and GreenPoint Rated designs incorporate TCAC's minimum new construction and rehabilitation energy

standards, certifications of these green building designs are sufficient to document the minimum construction energy efficiency standards.

TCAC's regulatory compliance and verification requirements for rehabilitation project energy efficiency improvements currently refer to a California Energy Commission (CEC) Home Energy Rating System (HERS) II rating or report. The CEC does not have a rating system or report with this title. Staff is proposing language which corrects this erroneous reference.

Section 10325(c)(7)

Proposed Change:

(7) Lowest Income in accordance with the table below Maximum 52 points

(A) The "Percent of Area Median Income" category may be used only once. For instance, 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income cannot be used twice for 100% at 50% and receive 50 points, nor can 50% of Income Targeted Units to Total Tax Credit Units at 50% of Area Median Income for 25 points and 40% of Income Targeted Units to Total Units at 50% of Area Median Income be used for an additional 20 points. However, the "Percent of Income Targeted Units" may be used multiple times. For example, 50% of Targeted Units at 50% of Area–Median Income for 25 points may be combined with another 50% of Targeted Units at 45% of Area Median Income to achieve the maximum points. All projects must score at least 45 points in this category to be eligible for 9% Tax Credits.

Only projects competing in the Rural set aside may use the 55% of Area median income column.

Lowest Income Points Table:

		Percent of Area Median Income					
		55	***50***	***45***	***40***	***35***	***30***
	80				45	47.5	50
	75				42.5	45	47.5
	70				40	42.5	45
	65			35	37.5	40	42.5
	60			32.5	35	37.5	40
	55			30	32.5	35	37.5
	50		25*	27.5	30	32.5	35
Percent of	***45***		22.5*	25	27.5	30	32.5
Income	***40***	17.5*	20	22.5	25	27.5	30
Targeted	***35***	15*	17.5	20	22.5	25	27.5
Units To	***30***	12.5*	15	17.5	20	22.5	25
Total Tax	***25***	10*	12.5	15	17.5	20	22.5
Credit Units	***20***	7.5*	10	12.5	15	17.5	20
(exclusive of	***15***	5*	7.5	10	12.5	15	17.5
mgr.'s unit)	***10***	2.5*	5	7.5	10	12.5	15

* Available to Rural set-aside projects only

(B) A project that agrees to have at least ten percent (10%) of its units available for tenants with incomes no greater than thirty percent (30%) of area median, and to restrict the rents on those units accordingly, will receive two points in addition to other points received under this subsection. The 30% units must be spread across the various bedroom-count units, starting with the largest bedroom-count units (e.g. four bedroom units), and working down to the smaller bedroom-count units, assuring that at least 10% of the larger units are proposed at 30% of area median income. So long as the applicant meets the 10% standard project-wide, the 10% standard need not be met among all of the smaller units. The CTCAC Executive director may correct applicant errors in carrying out this largest-to-smallest unit protocol. (These points may be obtained by using the 30% section of the matrix.)

All projects, except those applying under section 10326 of these regulations, will be subject to the minimum low income percentages chosen for a period of 55 years (50 years for projects located on tribal trust land), unless they receive Federal Tax Credits only and are intended for eventual tenant homeownership, in which case they must submit, at application, evidence of a financially feasible program, incorporating, among other items, an exit strategy, home ownership counseling, funds to be set aside to assist tenants in the purchase of units, and a plan for conversion of the facility to home ownership at the end of the initial 15 year compliance period. In such a case, the regulatory agreement will contain provisions for the enforcement of such covenants.

Reason:

The proposed change incorporates the existing authority of tribes to enter into lease agreements for 25 year terms with 25 year renewal periods, which is slightly less than California's 55 year regulatory agreement restriction period. TCAC staff anticipates applications from tribes will require lease agreements between tribes and project ownership entities, and proposes to align these projects' regulatory restriction requirements with tribal leasing abilities.

Section 10325(c)(8)

Proposed Change:

(8) Readiness to Proceed. 20 points will be available to projects that meet ALL of the following, and are able to begin construction within 180 days of the Credit Reservation, as evidenced by submission, within that time, of: a completed updated application along with a detailed explanation of any changes from the initial application, an executed construction contract, a construction lender trade payment breakdown of approved construction costs, recorded deeds of trust for all construction financing (unless a project's location on tribal trust land precludes this), binding commitments for permanent financing, binding commitments for any other financing required to complete project construction, a limited partnership agreement executed by the general partner and the investor providing the equity, payment of all construction lender fees, issuance of building permits (a grading permit does not suffice to meet this requirement) or the applicable tribal documents and notice to proceed delivered to the contractor. If

no construction lender is involved, evidence must be submitted within 180 days after the Reservation is made that the equity partner has been admitted to the ownership entity, and that an initial disbursement of funds has occurred. CTCAC shall conduct a financial feasibility and cost reasonableness analysis upon receiving submitted Readiness documentation.

~~For projects receiving competitive reservations in the first round of 2012, the 180-day references in the preceding paragraph shall be extended by thirty (30) days.~~

In addition to the above, all applicants receiving any readiness points under this subsection must provide an executed Letter of Intent (LOI) from the project's equity partner within 90 days of the Credit Reservation. The LOI must include those features called for in the CTCAC application. Failure to meet these two timelines shall result in rescission of the Tax Credit Reservation. The following must be delivered:

(A) enforceable commitment for all construction financing, as evidenced by executed commitment(s) and payment of commitment fee(s);

(B) evidence, as verified by the appropriate officials, of site plan approval and that all local land use environmental review clearances (CEQA, ~~and~~ NEPA, and applicable tribal land environmental reviews) necessary to begin construction are either finally approved or unnecessary;

(C) evidence of all necessary public or tribal approvals except building permits; and

(D) evidence of design review approval.

For paragraphs (B), (C), and (D) an appeal period may run up to 30 days beyond the application due date. The applicant must provide proof that either no appeals were received, or that any appeals received during that time period were resolved within that 30-day period to garner local approval readiness points.

In the event that one or more of the above criteria have not been met, 5 points may be awarded for each one that has been met, up to a maximum of 15 points. The 180-day requirements shall not apply to projects that do not obtain the maximum points in this category.

Reason:

Proposed language adds updated application submittal requirements at the 180-day readiness date. TCAC's receipt and review of updated application and financing information at that time would replace TCAC's current final reservation review. A financial review six months following preliminary reservation would adequately assure TCAC that the basic financial structure of the project has not changed, mitigating the need to conduct an additional review at the current final reservation stage.

Proposed language addresses equivalent Readiness to Proceed requirements for applications from Native American tribes. Tribes may not be able to record deeds of trust against tribal trust land, may not issue building permits, and may have differing land entitlement and environmental review requirements. TCAC staff has been informed that tribes have varying site and building approval processes. For example, some (but not all) tribes have planning departments, some

tribes have adopted International Code Council (ICC) or state building codes, and some have established their own codes. In some instances, the appropriate tribal council official may provide written documentation that all building approval requirements have been met.

An additional proposed change would simply remove a one-time historic provision that no longer applies.

Section 10325(c)(9)(A), (B) and (C)

Proposed Change:

(9) Miscellaneous Federal and State Policies Maximum 2 points

(A) State Credit Substitution. For applicants that agree to exchange Federal Tax Credits for State Tax Credits in an amount that will yield equal equity as if only Federal Credits were awarded. Applicants requesting State credits within the submitted application shall not receive points for State Credit Substitution. 2 points

(B) Universal Design. Project design incorporates the principles of Universal Design in at least half of the project's units by including: ~~accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry and interior doors with lever hardware and 42" minimum width hallways; accessible full bathroom on primary floor with 30" x 60" clearance parallel to the entry to 60" wide accessible showers with grab bars, anti-scald valves and lever faucet/shower handles, and reinforcement applied to walls around toilet for future grab bar installations; accessible kitchen with 30" x 48" clearance parallel to and centered on front of all major fixtures and appliances.~~

- Accessible routes of travel to the dwelling units with accessible 34" minimum clear-opening-width entry, and 34" clear width for all doors on an accessible path.
- Interior doors with lever hardware and 42" minimum width hallways.
- Fully accessible bathrooms complying with the 2010 ADA Standards for Accessible Design and CBC 11A and 11B. In addition a 30"x48" clearance parallel to and centered on the bathroom vanity allowing for parallel approach.
- Accessible kitchens with 30"x48" clearance parallel to and centered on the front of all major appliances and fixtures (refrigerator, oven, dishwasher and sink).
- Accessible bedroom size shall be as described in the Fundamental Design Criteria: Master Bedroom 150-200 square feet, with a minimum room dimension of 12'.
- Universally Designed units shall include an ISA symbol (raised and tactile, a minimum of 1" x1") incorporated into the Unit signage .
- Accessible Parking in addition to what is minimally required by the 2010 ADA Standards for Accessible Design is not required.
- Audio and visual doorbells required by UFAS shall be installed.
- Closets, balconies, shall be located on an accessible route.

~~1~~ 2 points

(C) Smoke Free Residence. The proposed project will contain nonsmoking buildings or sections of buildings. Nonsmoking sections must consist of at least half the units within the building, and those units must be contiguous. ~~1~~ 2 points

(D) Historic Preservation. The project proposes to use Historic Tax Credits 1 point

(E) Qualified Census Tract. The project is located within a Qualified Census Tract (QCT) and the development would contribute to a concerted community revitalization plan as demonstrated by a letter from a local government official. The letter must delineate the various community revitalization efforts, funds committed or expended in the previous five years, and how the project would contribute to the community's revitalization. 2 points

(F) Eventual Tenant Ownership. The project proposes to make tax credit units available for eventual tenant ownership and provides the information described in Section 13025(c)(7) of these regulations. 1 point

Reason:

The proposed change would update TCAC's standards for universal design, bringing those standards into conformance with current understanding and practice. The proposed standards align with those adopted by the County of Los Angeles' housing Notice of Funding Availability and constitutes clear, effective guidance for implementing principals allowing all populations access to TCAC-assisted units. The listed features would also be cross-referenced and applied as an additional threshold requirement for the Senior housing type at Section 10325(g)(2).

Section 10325(c)(10)(A)

Proposed Change:

(10) Tie Breakers

If multiple applications receive the same score, the following tie breakers shall be employed:

For applications for projects within single-jurisdiction regions only (the City and County of San Francisco and the City of Los Angeles geographic apportionments), the first tiebreaker shall be the presence of a funding commitment to the project by a City housing agency. Within those cities, and for all other applications statewide, the subsequent tiebreakers shall be as follows:

First, if an application's housing type goal has been met in the current funding round in the percentages listed in section 10315, then the application will be skipped if there is another application with the same score and with a housing type goal that has not been met in the current funding round in the percentages listed in section 10315; and

Second, the highest of the sum of the following two ratios:

(A) Committed permanent public funds, as described in Section 10325(c)(1)(C), defraying residential costs to total residential project development costs.

Except where a third-party funding commitment is explicitly defraying non-residential costs only, public funds shall be discounted by the proportion of the project that is non-residential. Permanent funds shall be demonstrated through documentation including but not limited to public funding award letters, committed land donations, or documented project-specific local fee waivers.

The numerator of this ratio may include permanent funding committed by a Community Foundation or a charitable foundation where a public body appoints a majority of the voting members. Additionally the numerator may include the value of land and improvements contributed by an unrelated organization formed under Internal Revenue Code Section 501(c), so long as the contributed asset has been held by the organization for at least 10 years prior to the application due date. Such foundation or organization contributions must be in the form of a grant or residual receipts loan. Local land donations include land leased from a public entity, or permitted foundation or organization for a de minimis annual lease payment. Permanent funding sources for this tiebreaker shall not include equity commitments related to the Low Income Housing Tax Credits.

The numerator of projects with public operating- or rental-subsidies may be increased by 25 percent (25%) of the percentage of proposed tax credit assisted units benefitting from the subsidy. Such subsidies must be received from one or more of the following programs: Project Based Section 8; PRAC (Section 202 and 811); USDA Section 521 Rental Assistance; Shelter Plus Care; McKinney Act Supportive Housing Program Grants; ~~Shelter Plus Care~~Native American Housing Block Grant (IHBG); California Mental Health Services Act operating subsidies; and Public Housing Annual Contributions contracts. Applicants seeking scoring consideration for other public sources of operating- or rent-subsidies must receive written Executive Director approval prior to the application due date.

Reason:

The first proposed change would add a new first tiebreaker for projects within San Francisco and the City of Los Angeles. Under the proposed rule, ties among applications would be decided, first, based upon the presence of City housing agency funding in the project. Projects supported financially by a City housing organization within those communities would be deemed to have merit by virtue of succeeding in a local funding process. Projects without such local financial support would not have benefitted from the same level of local review and support.

In part, the rule responds to 2013 circumstances wherein projects within the City of Los Angeles competed successfully in spite of the City's opposition to those projects. A simple remedy going forward would be for TCAC to examine the relative support for such projects in the form of local housing agency financing commitments. If multiple tied applications have City housing agency funding commitments, then those projects would move on to the two existing tiebreakers as needed for resolution.

TCAC staff recognize that the proposed tiebreaker would pre-empt the first tiebreaker, and therefore could result in TCAC exceeding a given housing type goal as established in Section 10315(h). TCAC would monitor this dynamic, and is assuming the Cities involved would honor

the intent behind Section 10315(h) by not causing the State to unduly exceed any housing type goal.

An additional proposed change under paragraph (A) would delete a duplicative reference to a subsidy and add a Native American subsidy to the list of subsidies enabling an increase to the final tie breaker's first numerator.

Section 10325(d)(1)

Proposed Change:

Following the scoring and ranking of project applications in accordance with the above criteria, subject to conditions described in these regulations, reservations of Tax Credits shall be made for those applications of highest rank in the following manner.

(1) Set-aside application selection. Beginning with the top-ranked application from the Nonprofit set-aside, followed by the Rural set-aside (funding the RHS and HOME program apportionment first, and the Tribal pilot apportionment second), the At Risk set-aside, and the Special Needs/SRO set-aside, the highest scoring applications will have Tax Credits reserved. Credit amounts to be reserved in the set-asides will be established at the exact percentages set forth in section 10315. If the last project funded in a set-aside requires more than the credits remaining in that set-aside, such overages in the first funding round will be subtracted from that set-aside in determining the amount available in the set-aside for the second funding round. If Credits are not reserved in the first round they will be added to second round amounts in the same Set Aside. If more Tax Credits are reserved to the last project in a set-aside than are available in that set-aside during the second funding round, the overage will be taken from the Supplemental Set-Aside if there are sufficient funds. If not, the award will be counted against the amounts available from the geographic area in which the project is located. Any unused credits from any Set-Asides will be transferred to the Supplemental Set-Aside and used for Waiting List projects after the second round. Tax Credits reserved in all set-asides shall be counted within the housing type goals.

(A) For an application to receive a reservation within a statutory set-aside, there shall be at least one dollar of Credit not yet reserved in the set-aside.

(B) ~~If there is a zero or negative amount of Tax Credits in either the Federal or State Tax Credit categories requested by the applicant, the application shall be by-passed in favor of the next highest-ranking application~~. Set-aside applications requesting State tax credits shall be funded, even when State credits for that year have been exhausted. The necessary State credits shall be reserved from the subsequent year's aggregate annual State credit allotment.

Reason:

Proposed changes to subsection (d)(1) would correctly reference an earlier proposed change adding HOME to the RHS apportionment, and reference the Rural set-aside Tribal pilot apportionment as part of the listed rankings in the set-aside application selection.

An additional proposed change would require TCAC to forward-commit subsequent-year State credits to set-aside applications in the unlikely event that no State credits remain during that phase of TCAC award decision-making. TCAC has not experienced a case where a set-aside application was bypassed due to unavailable State credits, and reaching forward to fund a winning application is better public policy than skipping that project.

Section 10325(f)(2)

Proposed Change:

(2) Demonstrated site control. Applicants shall provide evidence that the subject property is within the control of the applicant.

(A) Site control may be evidenced by:

(i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report;

(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property;

(iii) an executed disposition and development agreement between the applicant and a public agency; or,

(iv) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence must be provided at the time of the application that all extensions and other conditions necessary to keep the agreement current through the application filing deadline have been executed.

(B) A current title report (within 90 days of application), or for tribal trust land a title status report, shall be submitted with all applications for purposes of this threshold requirement.

(C) The Executive Director may determine, in her/his sole discretion, that site control has been demonstrated where a local agency has demonstrated its intention to acquire the site, or portion of the site, through eminent domain proceedings.

Reason:

The proposed change recognizes the difficulty Native American tribes may have in obtaining a title report from a title insurance company for tribal trust land. A title status report (TSR) is the equivalent of a preliminary title report for trust land and is a report issued after a title examination. A TSR provides the tract's legal description, current ownership, and lists any restrictions, encumbrances, or conditions. A certified TSR is generated by the federal Land Title and Records Office. An uncertified TSR is an informational title report generated at the beginning of the federal title service process. In the event that neither a title report nor a certified

TSR is available within a reasonable period of time, TCAC staff anticipates accepting an uncertified TSR at the application stage.

Section 10325(f)(3)

Proposed Change:

(3) Enforceable financing commitment. Applicants shall provide evidence of enforceable financing commitments for at least fifty percent (50%) of the acquisition and construction financing, or at least fifty percent (50%) of the permanent financing, of the proposed project's estimated total acquisition and construction or total permanent financing requirements. An "enforceable financing commitment" must:

(A) be in writing, stating rate and terms, and in the form of a loan, grant or an approval of the assignment/assumption of existing debt by the mortgagee;

(B) be subject only to conditions within the control of the applicant, but for obtaining other financing sources including an award of Tax Credits;

(C) have a term of at least fifteen (15) years if it is permanent financing;

(D) demonstrate feasibility for fifteen (15) years at the underwriting interest rate, if it is a variable or adjustable interest rate permanent loan; and,

(E) be executed by a lender other than a mortgage broker, the applicant, or an entity with an identity of interest with the applicant, unless the applicant is a lending institution actively and regularly engaged in residential lending; and

(F) be accepted in writing by the proposed mortgagor or grantee, if private financing.

Substitution of such funds may be permitted only when the source of funding is similar to that of the original funding, for example, use of a bank loan to substitute for another bank loan, or public funds for other public funds. General Partner loans or developer loans must be accompanied by documented proof of funds being available at the time of application. In addition, General Partner or developer loans to the project are unique, and may not be substituted for or foregone if committed to within the application.

For projects using FHA-insured debt, the submission of a ~~multifamily accelerated processing invitation~~ letter from the U.S. Department of Housing and Urban Development <u>(HUD) indicating that</u>~~, together with the submission of~~ a multifamily accelerated processing firm commitment application <u>has been accepted by HUD for processing</u> will suffice to satisfy the requirements of this enforceable financing commitment requirement.

Reason:

The proposed change clarifies the documentation requirement associated with HUD FHA-insured debt. The proposed language was provided to TCAC by San Francisco and Los Angeles HUD office staff, and more accurately reflects HUD's process for entertaining FHA applications.

Section 10325(f)(7)

Proposed Change:

(7) Minimum construction standards. For preliminary reservation applications, applicants shall provide a statement of their intent to utilize landscaping and construction materials ~~which are~~ compatible with the proposed project's neighborhood~~ in which the proposed project is to be located~~, and that the architectural design and construction materials will provide for low maintenance and durability, as well as be suited to the environmental conditions to which the project will be subjected. Additionally, the statement of intent shall note that the following minimum specifications will be incorporated into the project design for all new construction and rehabilitation projects. Finally, a statement shall commit the property owner to at least the following standards when replacing each of the following listed systems or materials:

(A) Energy Efficiency. All new construction buildings shall be fifteen percent (15%) better than the current Energy Efficiency Standards (California Code of Regulations, Part 6 of Title 24) including heating, cooling, fan energy, and water heating but not the following end uses: lighting, plug load, appliances, or process energy. All rehabilitated buildings shall have improved energy efficiency above the modeled energy consumption of the building(s) based on existing conditions, with at least a 10% post-rehabilitation improvement over existing conditions energy efficiency achieved for each building. Except for applicants developing a project in accordance with the minimum requirements of Leadership in Energy & Environmental Design (LEED) or GreenPoint Rated Multifamily Guidelines, a completed Sustainable Building Method Workbook must be submitted at the time of application.

(B) CALGreen Compliance. New construction buildings of four (4) or more habitable stories shall meet the mandatory provisions of the CALGreen Code (Title 24, Part 11 of the California Code of Regulations). All rehabilitation projects, including rehabilitation projects of four (4) or more habitable stories, are required to meet the mandatory provisions of the CALGreen Code for any building product or system being replaced as part of the scope of work.

(C) Landscaping. A variety of plant and tree species that require low water use shall be provided in sufficient quantities based on landscaping practices in the general market area and low maintenance needs. Projects shall follow the requirements of the state Model Water Efficient Landscape Ordinance (http://www.water.ca.gov/wateruseefficiency/landscapeordinance/) unless a local landscape ordinance has been determined to be at least as stringent as the current model ordinance.

(D) Roofs. Roofing shall carry a three-year subcontractor guarantee and at least a 20-year manufacturer's warranty.

(E) Exterior doors. Insulated or solid core, flush, paint or stain grade exterior doors shall be made of metal clad hardwood faces, or fiberglass faces, with a standard one-year guarantee and all six sides factory primed.

(F) Appliances. ENERGY STAR rated appliances, including but not limited to, refrigerators, dishwashers, and clothes washers shall be installed when such appliances are provided or replaced within Low-Income Units and/or in on-site community facilities unless waived by the Executive Director.

(G) Window coverings. Window coverings shall be provided and may include fire retardant drapes or blinds.

(H) Water heater. For units with individual tank-type water heaters, minimum capacities are to be 30 gallons for one- and two-bedroom units and 40 gallons for three-bedroom units or larger.

(I) Floor coverings. A hard, water resistant, cleanable surface shall be required for all kitchen and bath areas. Carpet complying with U.S. Department of Housing and Urban Development/Federal Housing Administration UM44D, or alternatively, cork, bamboo, linoleum, or hardwood floors shall be provided in all other floor spaces unless this requirement is specifically waived by the Executive Director.

(J) Use of Low Volatile Organic Compound (VOC) paints and stains (Non-flat: 150 g/l or less, Flat: 50 g/l or less) for all interior surfaces where paints and stains are applied.

(K) All fiberglass-based insulation shall meet the Greenguard Emission Criteria for Children and Schools (http://greenguard.org/en/CertificationPrograms/CertificationPrograms_childrenSchools.aspx).

(L) Consistent with California State law, projects with 16 or more residential units must have an on-site manager's unit. In addition, for every 80 non-manager units in a project, at least one on-site manager's unit shall also be provided for either another on-site manager or other maintenance personnel. Special needs projects may demonstrate 24-hour desk staffing in lieu of an on-site manager's unit. Scattered site projects totaling 16 or more units must have at least one on-site manager's unit for the entire project, and at least one manager's unit at each site where that site's building(s) consist of 16 or more units. Scattered sites within 100 yards of each other shall be treated as a single site for purposes of the on-site manager rule only.

If a rehabilitation applicant does not propose to meet the requirements of this subsection, its Capital Needs Assessment must show that the standards not

proposed to be met are either unnecessary or excessively expensive. All exemptions must be approved in advance by the Executive Director.

Compliance and Verification: For placed-in-service applications, for subsection (A), applicants with new construction projects must submit the appropriate California Energy Commission (CEC) compliance form for the project which shows the necessary percentage improvement better than the appropriate Standards. For subsection (A) applicants with rehabilitation projects, the applicant must submit the ~~California Energy Commission HERS II~~ energy consumption and analysis report using the appropriate performance module of CEC-approved software, which shows the pre- and post-rehabilitation ~~HERS II~~ estimated ~~annual~~ Time Dependent Valuation (TDV) energy use demonstrating the required improvement, in their placed-in-service package. With the exception of applicants developing a project in accordance with the minimum requirements of LEED or GreenPoint Rated Multifamily Guidelines, applicants must submit a completed Sustainable Building Method Workbook. For subsections (B) through (K) applicants shall submit third party documentation from one of the following sources confirming the existence of items, measures, and/or project characteristics: a certified HERS Rater, a certified GreenPoint rater, or a US Green Building Council certification. Failure to produce appropriate and acceptable third party documentation for (A) through (K) of this subsection may result in negative points.

Reason:

The proposed change to the opening paragraph would clarify that the minimum construction standards are applicable throughout the project's life. That is, when a system is to be replaced or repaired, the project owner would adhere to the relevant minimum construction standard associated with the repaired or replaced feature. TCAC compliance staff has seen properties over time lose their original features that conformed to TCAC's minimum construction standards. For example, original Energy Star appliances may be replaced over time with nonconforming appliances. The regulatory intent is for the minimum standard to be implemented originally and maintained over time.

The remaining proposed changes would add a reference to an existing application form and correct a reference to a required energy analysis report. In 2012 TCAC published a Sustainable Building Method Workbook to assist project developers in implementing the energy efficiency and sustainable building method requirements of Sections 10325(c)(6) and 10325(f)(7). These sections of TCAC regulations were revised effective in 2011 and the workbook document was developed as guidance in response to numerous technical questions received by TCAC staff. Beginning in 2013, staff included the Sustainable Building Method Workbook as an application requirement. Staff is now proposing to specify this requirement in the relevant regulation sections, and to clarify when the workbook is not required. Since the basic requirements of building a project in compliance with the LEED and GreenPoint Rated designs incorporate TCAC's minimum new construction and rehabilitation energy standards, certifications of these green building designs are sufficient to document the minimum construction energy efficiency standards.

TCAC's regulatory compliance and verification requirements for rehabilitation project energy efficiency improvements currently refer to a California Energy Commission (CEC) Home Energy Rating System (HERS) II rating or report. The CEC does not have a rating system or report with this title. Staff is proposing language which corrects this erroneous reference.

Section 10325(f)(10)

Proposed Change:

(10) Projects applying for competitive Tax Credits and involving rehabilitation of existing buildings shall be required to: ~~complete, at a minimum, the higher of:~~

(A) ~~$20,000~~ Complete, at a minimum, the higher of $40,000 in hard construction costs per unit ~~(except for those projects defined as "at risk" pursuant to these regulations, which must complete a minimum of $10,000 in hard construction costs per unit);~~ or 20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I);

(B) ~~20% of the adjusted basis of the building pursuant to IRC Section 42(e)(3)(A)(ii)(I).~~ Propose rehabilitating a property that is at least 20 years old; and

(C) Propose a 100 percent (100%) tax credit project to be regulated at rents and income targeting averaging 40 percent (40%) of Area Median Income (AMI).

Reason:

TCAC has witnessed a ten-year trend toward more rehabilitation project awards using 9% Low Income Housing Tax Credits. The vast majority of awarded rehabilitation projects are already-regulated publicly-assisted projects, wherein the regulated rents will continue on as they had prior to the 9% credit award. Many of these projects could successfully finance the acquisition and rehabilitation using tax-exempt bond financing and 4% credits.

The proposed amendments to this subsection would narrow the 9%-eligible rehabilitation projects down to high-value, more distressed properties. Distress would be indicated by minimum project age and cost of needed rehabilitation. In addition, value would be added by requiring deeper than average income targeting.

The average affordability for competitive 9% projects is 49% of AMI. Projects originally developed with public subsidy, occasionally including Low Income Housing Tax Credits, should be allowed to apply for 9% credits only if necessitated by deeper income targeting. Average income targeting above 40% of AMI should be able to finance the projects rehabilitation using tax exempt bond financing and 4% tax credits.

The above measures would also advance TCAC's interest in using a greater majority of California's 9% credits for new construction projects. In 2012 and 2013 rehabilitation has represented 40% and 35% of those year's credit award amounts respectively. As recently as 2005, 90% of California's 9% credit awards were for new construction projects. Rehabilitation projects, and especially re-syndication proposals, should first consider using tax exempt bond financing with 4% credits.

Section 10325(g)(1)

Proposed Change:

(1) Large Family projects. To be considered large family housing, the application shall meet the following additional threshold requirements.

(A) At least thirty percent (30%) of the Tax Credit units in the project shall be three-bedroom or larger units, with the remaining units configured based on the demand established in the basic threshold requirements except that for projects qualifying for and applying under the At-risk set-aside, the Executive Director may grant a waiver from this requirement if the applicant shows that it would be cost prohibitive to comply;

(B) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. ~~These limits may be waived for rehabilitation projects, at the discretion of the Executive Director.~~ Three-bedroom units shall include at least 1,000 square feet of living space and four-bedroom units shall include at least 1,200 square feet of living space, unless these restrictions conflict with the requirements of another governmental agency to which the project is subject to approval. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director. ~~(bedrooms~~ Bedrooms shall be large enough to accommodate two persons each and living areas shall be adequately sized to accommodate families based on two persons per bedroom.~~)~~;

Reason:

The proposed substantive change would be to allow the TCAC Executive Director to waive unit size minimum for three- and four-bedroom units as he/she may do now for one- and two-bedroom units. TCAC staff suspects the current waiver limitation to one- and two-bedroom units, but not three- and four-bedroom units, was a regulation drafting error. The Executive Director should be allowed to consider a waiver for three- and four-bedroom units in a rehabilitation project, just as is now permitted in one- and two-bedroom units.

Section 10325(g)(1)(I)

Proposed Change:

(1) Large Family projects.

Note: Other than the proposed change above to paragraphs (B) and (E) above, items (g)(1)(A) – (H) will remain unchanged.

(I) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Reason:

The proposed change incorporates the existing authority of tribes to enter into lease agreements for 25 year terms with 25 year renewal periods, which is slightly less than California's 55 year regulatory agreement restriction period. TCAC staff anticipates applications from tribes will

require lease agreements between tribes and project ownership entities, and so proposes to align these projects' regulatory restriction requirements with tribal leasing abilities.

Section 10325(g)(2)

Proposed Change:

(2) Senior projects. To be considered senior housing, the application shall meet the following additional threshold requirements:

(A) All units shall be restricted to ~~households eligible under the provisions of California Civil Code 51.3~~ residents who are 62 years of age or older (except for projects utilizing federal funds whose programs have differing definitions for senior projects), and further be subject to state and federal fair housing laws with respect to senior housing;

(B) ~~The project shall be on a suitable site. Access to basic services shall be available by other than resident-owned transportation;~~ All residential units and the project itself shall be developed using the Universal Design standards contained in Section 10325(c)(9)(B). Applicant must commit to obtaining a third-party confirmation of meeting CTCAC's Universal Design Standards from a Certified Accessibility Specialist.

(C) Projects over two stories shall have an elevator;

(D) No more than twenty percent (20%) of the low-income units in the project shall be larger than one-bedroom units, unless waived by the Executive Director, when supported by a full market study. One larger unit may be included for use as a manager's unit without a waiver;

(E) One-bedroom units must include at least 500 square feet and two-bedroom units must include at least 750 square feet of living space. These limits may be waived for rehabilitation projects, at the discretion of the Executive Director;

(F) ~~For projects receiving Tax Credits after 2000, emergency~~ Emergency call systems shall only be required in units intended for occupancy by frail elderly populations requiring assistance with activities of daily living, and/or applying as special needs units. When required, they shall provide 24-hour monitoring, unless an alternative monitoring system is approved by the Executive Director;

(G) Common area(s) shall be provided on site, or within approximately one-half mile of the subject property. For purposes of this part, common areas shall be allowed to include all interior common areas, such as the rental office and meeting rooms, but shall not include laundry rooms or manager living units, and shall meet the following size requirement: projects comprised of 30 or less total units, at least 600 square feet; projects from 31 to 60 total units, at least 1,000 square feet; projects from 61 to 100 total units, at least 1,400 square feet; projects over 100 total units, at least 1,800 square feet. Small developments of 20 units or fewer are exempt from this requirement;

(H) A public agency shall provide direct or indirect long-term financial support for at least fifteen percent (15%) of the total project development costs, or the owner's equity (includes syndication proceeds) shall constitute at least thirty percent (30%) of the total project development costs;

(I) Adequate laundry facilities shall be available on the project premises, with no fewer than one washer/dryer per 15 units. To the extent that tenants will be charged for the use of central laundry facilities, washers and dryers must be excluded from eligible basis. If no centralized laundry facilities are provided, washers and dryers shall be provided in each of the units subject to the further provision that gas connections for dryers shall be provided where gas is otherwise available at the property;

(J) Projects are subject to a minimum low-income use period of 55 years <u>(50 years for projects located on tribal trust land)</u>.

Reason:

The proposed change at paragraph (A) would eliminate the reference to a 55-years and older standard for the Senior housing type, and instead refer to populations aged 62-years and older standard for the Senior housing type. This definition would only apply to competitive nine percent (9%) and four percent (4%) plus State credit applications. Both 9% and tax exempt bond projects seeking 4% credits could continue to use a legally-permitted 55-year age standard, but would no longer meet the Senior housing type definition competitively or the additional threshold requirement.

The Senior housing type continues to be proposed in numerous applications, several of which lose to other housing types on the first tiebreaker. Many times the losing application is proposing to house seniors aged 62 years and above. The problem is exacerbated by earlier-funded senior projects proposing to use the 55-years and above standard. In 2012 and 2013, 41 percent (41%) of the 9% Senior housing type winners proposed using the 55-years and above standard.

Providing housing for populations aged 62-years and above is the more critical need, in that these households are far more likely to have fixed incomes and are reaching an age associated with greater medical and other service needs. Among the 2012-2013 Senior projects receiving 9% credits, eleven (11) had other rent or operating subsidies and nine (9) of those were at the 62-years and above standard. While the proposed language would continue to provide an exception for projects' federal funding source requirements, TCAC's experience has been that most federal funding sources are found in the 62-years and above projects.

The proposed change at paragraph (B) would require that Senior housing type projects employ Universal Design principles in each unit within the project. This is already a frequent practice, and would permit seniors to age in place and live independently for a longer period. This would be especially important for a senior population beyond age 62 years.

The proposed change at paragraph (F) would simply remove the historic start date for the requirement.

Finally, the proposed change at paragraph (J) would acknowledge legal limitations on encumbrances related to tribal land (see proposed change at Section 10325(g)(1)(I) above).

Section 10325(g)(3)(H)

Proposed Change:

(3) SRO projects.

Note: No changes are proposed for paragraphs (g)(3)(A) through (G).

(H) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Reason:

See above Section 10325(g)(1)(I) for an explanation of the tribal land lease structure.

Section 10325(g)(4)

Proposed Change:

(4) Special Needs projects. To be considered Special Needs housing, at least 50% of the Tax Credit units in the project shall serve populations that meet one of the following: are individuals living with physical, sensory, developmental, or mental health disabilities; ~~are developmentally disabled,~~ are survivors of physical abuse~~,~~; are homeless as described in Section 10315(b);~~, have~~ are individuals with chronic illness, including HIV~~ and mental illness,~~; ~~are displaced teenage parents (or expectant teenage parents)~~ are emancipated youth transitioning out of foster care; or another specific group determined by the Executive Director to meet the intent of this housing type. The Executive Director shall have sole discretion in determining whether or not an application meets these requirements. In the case of a development that is less than 75% special needs, the non-special needs units must meet another housing type (for example, large family), although the project will be considered as a special needs project for purposes of Section 10325**.** The application shall meet the following additional threshold requirements:

Reason:

The proposed change would update TCAC's special needs language, explicitly including individuals with physical or sensory disabilities, and transition aged youth. Changes would also eliminate references to displaced teenage parents and expectant teenage parents. Federal and State laws establish lawful age discrimination, and transition aged youth could include each of the currently listed teenaged examples.

Section 10325(g)(4)(G)

Proposed Change:

(4) Special Needs projects.

Note: No changes are proposed for paragraphs (g)(4)(A) through (F).

(G) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Reason:

See above Section 10325(g)(1)(I) for an explanation of the tribal land lease structure.

Section 10325(g)(5)(A)

Proposed Change:

(5) At-risk projects.

(A) Projects are subject to a minimum low-income use period of 55 years (50 years for projects located on tribal trust land).

Reason:

See above Section 10325(g)(1)(I) for an explanation of the tribal land lease structure.

Section 10326(g)(2)

Proposed Change:

(2) Demonstrated site control. Applicants shall provide evidence that the subject property is, and will remain within the control of the applicant from the time of application submission.

(A) Site control may be evidenced by:

(i) a current title report (within 90 days of application) showing the applicant holds fee title or, for tribal trust land, a title status report;

(ii) an executed lease agreement or lease option for the length of time the project will be regulated under this program between the applicant and the owner of the subject property; an executed disposition and development agreement between the applicant and a public agency; or,

(iii) a valid, current, enforceable contingent purchase and sale agreement or option agreement between the applicant and the owner of the subject property. Evidence that all extensions necessary to keep agreement current through the application filing deadline have been executed must be included in the application.

(B) A current title report (within 90 days of application) or, for tribal trust land, a title status report, shall be submitted with all applications for purposes of this threshold requirement.

Reason:

As stated above under Section 10325(f)(2), the proposed change recognizes the difficulty Native American tribes may have in obtaining a title report from a title insurance company for tribal trust land. A title status report (TSR) is the equivalent of a preliminary title report for trust land and is a report issued after a title examination. A TSR provides the tract's legal description, current ownership, and lists any restrictions, encumbrances, or conditions. A certified TSR is

generated by the federal Land Title and Records Office. An uncertified TSR is an informational title report generated at the beginning of the federal title service process. In the event that neither a title report nor a certified TSR is available within a reasonable period of time, TCAC staff anticipates accepting an uncertified TSR at the application stage.

Section 10326(g)(5)

Proposed Change:

(5) Sponsor characteristics. Applicants shall provide evidence that as a Development Team, proposed project participants possess the knowledge, skills, experience and financial capacity to successfully develop, own and operate the proposed project. The Committee shall, in its sole discretion, determine if any of the evidence provided shall disqualify the applicant from participating in the Tax Credit Programs, or if additional Development Team members need be added to appropriately perform all program requirements. General partners and management companies lacking documented experience with Section 42 requirements using the minimum scoring standards of Sections 10325(c)(2)(A) and (B) shall be required to complete training as prescribed by CTCAC prior to a project's placing in service. <u>The minimum scoring standards referenced herein shall not be obtained through the two (2) point category of "a housing tax credit certification examination of a nationally recognized housing tax credit compliance entity on a list maintained by the Committee to satisfy minimum management company experience requirements for an incoming management agent" established at Section 10325(c)(2).</u> The following documentation is required to be submitted at the time of application:

(A) current financial statement(s) for the general partner(s), principal owner(s), and developer(s);

(B) for each of the following participants, a copy of a contract to provide services related to the proposed project:
- (i) Attorney(s) and or Tax Professional(s)
- (ii) Architect
- (iii) Property Management Agent
- (iv) Consultant
- (v) Market Analyst

Reason:

The proposed change clarifies that, for four percent (4%) credit applications, the minimum qualification may not be attained by the property management agent simply receiving a certification pursuant to training and examination as described in Section 10325(c)(2). The sponsor or the management team should have at least a minimal amount of actual experience, beyond just training.

Section 10326(j)(3)

Proposed Change:

(3) Projects ~~receiving an allocation of private activity bonds after 1999~~ shall maintain at least 10% of the total units at rents affordable to tenants earning 50% or less of the Area Median Income, and shall maintain a minimum 30 year affordability period.

Reason:

The proposed change would simply remove the historic start date for the requirement.

Section 10326(k)

Proposed Change:

Section 10326. Application Selection Criteria - Tax-exempt bond applications

Note: Other than the preceding non-substantive change to paragraph (j)(3), subsections (a)through (j)) will remain unchanged.

(k) Placed-in-service. Upon completion of construction of the proposed project, the applicant shall submit documentation required by Section 10322(i)~~(2)~~.

Reason:

The proposed change would simply adjust the reference to the proposed-to-be-amended Section 10322(i).

Section 10327(c)(2)(C)

Proposed Change:

(2) Developer fee. The maximum developer fee that may be included in project costs for a 9% competitive credit application is the lesser of 15% of the project's eligible basis plus 15% of the basis for non-residential costs included in the project and allocated on a pro rata basis, or two million ($2,000,000) dollars. A cost limitation on developer fees that may be included in eligible basis, shall be as follows:

Note: No changes are proposed for paragraphs (c)(2)(A) and (B).

(C) For purposes of this subsection, the unadjusted eligible basis is determined without consideration of the developer fee. Once established at the initial funded application, the developer fee cannot be increased, but may be decreased, in the event of a modification in basis. <u>Both the developer fee limitations in total project costs described in paragraphs (2) and (2)(B) above, and the developer fee limitations in basis described in (2)(A) and (2)(B) above apply to projects developed as multiple simultaneous phases.</u>

(D) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.

Reason:

The proposed change at paragraph (C) clarifies that TCAC's developer fee limitations apply to entire projects, even when those projects are developed as multiple simultaneous phases. The change would clarify that a developer may not claim a double fee in their project costs and basis by characterizing the project as multiple simultaneous projects. The regulation would limit developer fee on the entire project if it is being developed simultaneously, regardless of the characterization of the simultaneous schedule as "phases."

The second proposed change, at paragraph (D), relocates existing language regarding deferred developer fees and other costs from Section 10327(d) below. Locating the regulatory discussion of deferred fees under the larger Developer Fee subsection is more logical and user-friendly.

Section 10327(c)(5)(B)(4)

Proposed Change:

(4) Rehabilitated project buildings shall have eighty percent (80%) decrease in estimated ~~annual~~TDV energy use (or improvement in energy efficiency) ~~in the building's Home Energy Rating System II (HERS II)~~ post rehabilitation as demonstrated using the appropriate performance module of CEC approved software. Four percent (4%)

Reason:

The proposed changes to would correct a reference to an energy analysis rating system. TCAC's regulatory requirements for rehabilitation project energy efficiency improvements currently refer to a California Energy Commission (CEC) Home Energy Rating System (HERS) II rating or report. The CEC does not have a rating system or report with this title. Staff is proposing language which corrects the erroneous reference.

Section 10327(c)(5)(C)

Proposed Change:

(C) Additionally, for projects applying under Section 10326 of these regulations, ~~an increase of one percent (1%) in the threshold basis limits shall be available for every 1% of the project's units that will be income and rent restricted at or below 50 percent (50%) but above thirty-five percent (35%) of Area Median Income (AMI). A~~an increase of two percent (2%) shall be available for every 1% of the project's units that will

be restricted at or below 35% of AMI. In addition, the applicant must agree to maintain the affordability period of the project for 55 years (50 years for projects located on tribal trust land).

Reason:

The proposed change would eliminate, for tax-exempt bond/4% credit applications, a basis limit boost for units being rented to households at 50 percent (50%) of area median income (AMI). TCAC cannot tell that this provision has appreciably increased the availability of such units within 4% tax credit projects, and unnecessarily inflates potential tax credit awards. Rarely does a 4% project reach its basis limit, in part because of the exorbitant limit increase for 50% AMI units.

Preliminary results from a current State cost study indicate that 4% tax credit projects are as costly, on average, as 9% credit projects. The absence of meaningful basis limits controlling tax credit awards may be contributing to that cost statistic.

Tax-exempt bond/4% credit projects would still have more generous treatment of developer fee and basis limits where units are being held for households renting at 35% AMI rents. Such deeply targeted units inhibit a project's ability to access debt.

Finally, a proposed regulation change would account for restrictions on encumbering tribal land as described under proposed changes at Section 10325(g)(1)(I) above.

Section 10327(c)(6)

Proposed Change:

~~(6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments.~~

Note: Subsequent paragraphs numbers 7, 8, and 9 would be renumbered 6, 7, and 8 in light of the proposed removal of paragraph 6.

Reason:

The proposed clarifying change would simply move the minimum debt service coverage ratio requirement from its current location under subsection (c) "Reasonable cost determination" to the more logical location: subsection (g) "Underwriting criteria." The minimum would then reside with existing language regarding cash flow maximums. (See proposed change at Section 10327(g)(6) below.)

Section 10327(d)(2)

Proposed Change:

(d) Determination of eligible and qualified basis. The Committee shall provide forms to assist applicants in determining basis. The Committee shall rely on certification from an independent, qualified Certified Public Accountant for determination of basis; however,

the Committee retains the right to disallow any basis it determines ineligible or inappropriate.

(1) High Cost Area adjustment to eligible basis. Proposed projects located in a qualified census tract or difficult development area, as defined in IRC Section 42(d)(5)(c)(iii), may qualify for a thirty percent (30%) increase to eligible basis, subject to Section 42, applicable California statutes and these regulations.

~~(2) Deferred fees and costs. Deferral of project development costs shall not exceed an amount equal to seven-and-one-half percent (7.5%) of the unadjusted eligible basis of the proposed project prior to addition of the developer fee. Unless expressly required by a State or local public funding source, in no case may the applicant propose deferring project development costs in excess of half (50%) of the proposed developer fee. Tax-exempt bond projects shall not be subject to this limitation.~~

(2) Pursuant to Authority granted by IRC §42(d)(5)(B)(v), CTCAC designates credit ceiling applications proposing a project meeting the Special Needs housing type threshold requirements at Section 10325(g)(4) as a difficult development area (DDA).

Reason:

The proposed change would move the regulatory guidance regarding deferred fees to Section 10327(c)(2) where developer fee provisions are addressed. Locating the fee deferral language with the central discussion of developer fees would help readers and program users locate and understand related restrictions related to developer fees generally.

The second proposed change would establish that credit ceiling (9% credit) applications proposing a Special Needs housing type would be designated a Difficult Development Area (DDA) project. Federal law (IRC §42(d)(5)(B)(v)) permits State credit allocating agencies to so designate projects seeking 9% credits, but not those seeking 4% credits. Therefore, this proposed rule would only apply to 9% credit applications and awards.

By designating qualifying Special Needs 9% applications as DDA projects, sponsors could apply for the federal 130 percent (130%) adjustment to the project's requested eligible basis before TCAC calculates the federal credit award. Under the provisions of AB 952 (Atkins, Chapter 771, Stats of 2013), such Special Needs applications could also request State of California Low Income Housing Tax Credits. The proposed change would complement changes creating a new provision regarding Special Needs projects at Section 10317(d) above. With this proposed change, all Special Needs housing type applications seeking 9% credits could also request State credits, regardless of the project's location within a DDA or Qualified Census Tract (QCT).

Section 10327(g)(1)

Proposed Change:

(e) Underwriting criteria. The following underwriting criteria shall be employed by the Committee in a pro forma analysis of proposed project cash flow to determine the minimum Tax Credits necessary for financial feasibility and the maximum allowable Tax Credits:

(1) Minimum operating expenses shall include expenses of all manager units and market rate units, and must be at least equal to the minimum operating expense standards published by the Committee staff annually. The published minimums shall be established based upon periodic calculations of operating expense averages annually reported to TCAC by existing tax credit property operators. The minimums shall be displayed by region, and project type (including large family, senior, and SRO/Special Needs), and shall be calculated at the reported average or at some level discounted from the reported average. The Executive Director may, in his/her sole discretion, utilize operating expenses up to 15% less than required in this subsection for underwriting when the equity investor and the permanent lender are in place and provide evidence that they have agreed to such lesser operating expenses. These minimum operating expenses do not include property taxes, replacement reserves, depreciation or amortization expense, or the costs of any service amenities. Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.

(A) (A) Special needs projects that are less than 100% special needs shall prorate the operating expenses for the special needs units, and the other applicable operating expense minimums for the remainder of the units. ~~Out-year calculations shall be a two-and-one-half percent (2.5%) increase in gross income, a three-and-one-half percent (3.5%) increase in operating expenses (excluding operating and replacement reserves set at prescribed amounts,) and a two percent (2%) increase in property taxes.~~

Reason:

The proposed clarifying change would move TCAC's income and cost trending assumptions up from under the paragraph regarding special needs projects (paragraph A) into the more generally applicable paragraph (1). The cost-trending underwriting assumptions are meant to apply all projects, not only to special needs deals.

Section 10327(g)(2)

Proposed Change:

(2) Property tax expense minimums shall be one percent (1%) of total replacement cost, unless:

(A) the verified tax rate is higher or lower; or,
(B) the proposed sponsorship of the applicant includes an identified 501(c)(3) corporate general partner which will pursue a property tax exemption; or
(C) the proposed sponsorship of the applicant includes a Tribe or tribally-designated housing entity.

Reason:

This change adds a reference to the tribal housing property tax exemption in California's Revenue and Taxation Code Section 237.

Section 10327(g)(6)

Proposed Change:

(6) Minimum Debt Service Coverage. An initial debt service coverage ratio equal to at least 1.15 to 1 in at least one of the project's first three years is required, except for FHA/HUD projects, RHS projects or projects financed by the California Housing Finance Agency. Debt service does not include residual receipts debt payments. Except where a higher first year ratio is necessary to meet the requirements of subsection 10327(f), "cash flow after debt service" shall be limited to the higher of twenty-five percent (25%) of the anticipated annual must pay debt service payment or eight percent (8%) of gross income, during any one of the first three years of project operation. Pro forma statement utilizing CTCAC underwriting requirements and submitted to CTCAC at placed in service, must demonstrate that this limitation is not exceeded during the first three years of the project's operation. Otherwise, the maximum annual Federal Credit will be reduced at the time of the 8609 package is reviewed, by the amounts necessary to meet the limitations. Gross income includes rental income generated by proposed initial rent levels contained with the project application.

The reduction in maximum annual Federal Credit may not be increased subsequent to any adjustment made under this section.

Reason:

The proposed clarifying change would first move the minimum debt service coverage ratio requirement from its current location under subsection (c) "Reasonable cost determination" to the more logical location, subsection (g) "Underwriting criteria." The minimum would then reside with existing language regarding cash flow maximums. (See proposed change at Section 10327(c)(6) above.)

The more substantive change would allow a project to attain the minimum debt service coverage ratio within the project's first three years of operation, rather than in the first year. The change would accommodate projects forecasted to be slightly below the minimum in year one or two, but with improving cash flow attaining the necessary ratio by year three. Such projects would have demonstrated ongoing viability adequate to warrant a reservation of credits.

Section 10328(c) through (e)

Proposed Change:

(c) Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation but who did not receive all 20 points in the Readiness to Proceed point category shall provide the Committee with a completed updated application no later than 180 days following Credit reservation. ~~Final Reservations. No later than February 1 of the year that the building(s) must be placed-in-service pursuant to Section 42(h)(E)(i) of the Internal Revenue Code of 1986, as amended, the applicant shall provide the Committee a Final Reservation application providing the documentation for the project set forth in Section 10322(i)(1) of these regulations. Failure to provide the documentation at the time required may result in rescission of the Credit reservation and cancellation of a carryover allocation.~~

Upon receipt of the updated ~~Final Reservation~~ application ~~and supporting documentation~~, the Committee shall conduct a financial feasibility and cost reasonableness analysis for the proposed project, and determine if all conditions of the preliminary reservation have been satisfied. Substantive changes to the approved application, in particular, changes to the financing plan or costs, need to be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. ~~If all conditions have been satisfied, a final reservation of Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Tax Credits stated in the Preliminary Reservation. The Committee shall detail in the final reservation letter additional submission requirements necessary to receive tax forms for claiming Tax Credits.~~

(d) Carryover Allocations. Except for those applying under section 10326 of these regulations, applicants receiving a Credit reservation shall satisfy either the Placed-in-service requirements pursuant to subsection 10322(i)~~(2)~~ or carryover allocation requirements in the year the reservation is made, pursuant to IRC Section 42(h)(1)(E) and these regulations, as detailed below. An application for a carryover allocation must be submitted by October 31 of the year of the reservation, together with the applicable allocation fee, and all required documentation, except that the time for meeting the "10% test" and submitting related documentation, and owning the land, will be no later than twelve (12) months after the date of the carryover allocation.

(1) Additional documentation and analysis. The Executive Director may request, and the holder of a Credit reservation shall provide, additional documentation required for processing a carryover allocation. ~~Following submission of carryover allocation documents, the Executive Director shall conduct a financial feasibility and cost reasonableness analysis. Substantive changes to the approved application, in particular, changes to the financing plan or costs must be explained by the applicant in detail, and may cause the project to be reconsidered by the Committee. Once the analysis is satisfactorily concluded, a carryover allocation of Tax Credits shall be made in an amount not to exceed the maximum dollar amount of Credit stated in the Preliminary Reservation.~~

~~(2) For second round Credit reservations, a financial feasibility and cost reasonableness analysis may be conducted at the time Readiness documentation is submitted. Second round applicants not required to submit Readiness documentation are not exempt from this requirement.~~

~~(3)~~(2) In addition to the requirements of the Internal Revenue Code, to receive a carryover allocation an applicant shall provide evidence that applicant has maintained site control from the time of the initial application and, if the land is not already owned, will continue to maintain site control until the time for submitting evidence of the land's purchase.

Reason:

The proposed changes would establish a system whereby all 9% applicants would submit updated project financial information for TCAC review 180 days following the preliminary reservation of credits for that project. TCAC's review of those submitted updates to information provided in the original preliminary reservation application would constitute the State's

federally-required second review of the project's finances. The third required review would occur following the project's placed-in-service date.

The new process would eliminate the Final Reservation submittal and review process. That process would no longer be required since TCAC would review updated financial information at the three federally-required stages of the project development: preliminary reservation; 180-days following preliminary reservation; and placed-in-service.

Section 10328(g)

Proposed Change:

(g) Reservation Exchange for High-Rise Projects. A High-Rise Project with a reservation of Federal Credit pursuant to Section 10325, and a carryover allocation pursuant to Section 10328(d) and IRC Code § 42(h)(1)(E), may elect to return all of the Federal Credit during the year immediately following the year in which the carryover allocation is made in exchange for a new reservation and allocation of Federal Credits. An election to return Federal Credits pursuant to this subsection may be made only during January of the calendar year directly following the year in which the initial reservation and carryover allocation are made~~, except 2010 and 2011 award recipients may make this election in February 2012~~. The reservation and carryover allocation of the Federal Credits returned pursuant to this subsection shall be deemed cancelled by mutual consent pursuant to a written agreement executed by the Committee and the applicant specifying the returned credit amount and the effective date on which the credits are deemed returned. The Committee shall concurrently issue a new reservation of Federal Credits to the project in the amount of the Federal Credits returned by the project to the Committee.

Reason:

The proposed change would simply remove language accommodating projects at the historic start date for the requirement.

Section 10337(a)(2)

Proposed Change:

Where a Project is receiving renewable project-based rental assistance or operating subsidy:

(1) the Sponsor shall in good faith apply for and accept all renewals available;

(2) if the project-based rental assistance or operating subsidy is terminated through no fault of the owner, the property owner shall notify CTCAC in writing immediately and shall make every effort to find alternative subsidies or financing structures that would maintain the deeper income targeting contained in the recorded CTCAC regulatory agreement. Upon documenting to CTCAC's satisfaction unsuccessful efforts to identify and obtain alternative resources, the owner may increase rents and income targeting for Rent Restricted Units above the levels allowed by the recorded regulatory agreement up to the federally-permitted maximum. Rents shall be raised only to the extent required for Financial Feasibility, as determined by CTCAC. Where possible, remedies shall

include skewing rents higher on portions of the project in order to preserve affordability for units regulated by TCAC at extremely low income targeting. Any necessary rent increases shall be phased in as gradually as possible, consistent with maintaining the project's Financial Feasibility. If housing Special Needs populations, the property owner shall attempt to minimize disruption to existing households, and transition to non-Special Needs households only as necessary and upon vacancy whenever possible.

Reason:

The proposed change would clarify that TCAC's policy regarding terminated project subsidies applies to both rental assistance and operating subsidies. In addition, new language would clarify that, where subsidized projects house special needs populations, TCAC understands that the project may no longer be financially feasible housing special needs populations as originally committed in the recorded regulatory agreement.

The current and proposed language is meant to communicate TCAC's commitment to minimizing disruption to existing residents, but also to acknowledge that financial realities associated with lost subsidies may preempt original income targeting and special needs commitments.

Section 10337(b)

Proposed Change:

(b) Responsibility of owner.

(1) Compliance. All compliance requirements monitored by the Committee shall be the responsibility of the project owner. Project owners are required to annually certify tenant incomes in conformance with IRS regulation §1.42-5(c)(3) unless the project is a 100 percent (100%) tax credit property exempted under IRC Section 142(d)(3)(A). Owners of a 100% tax credit property must perform a first annual income recertification in addition to the required initial move-in certification. After initial move-in certification and first annual recertification, owners of 100% tax credit properties may discontinue obtaining income verifications. Owners of 100% tax credit properties must continue to check for full-time student status of all households during the entire tenancy of the households and throughout the initial compliance period, and continue recordkeeping in accordance with paragraph (1) of this subsection. These requirements continue if the tax credit property is sold, transferred, or under new management. Any failure by the owner to respond to compliance reports and certification requirements will be considered an act of noncompliance and shall be reported to the IRS if reasonable attempts by the Committee to obtain the information are unsuccessful.

(2) Accessible Units/Units with Adaptive Features: Reasonable Accommodations. Projects with fully accessible units, or units with adaptive features (also commonly referred to as "adaptable" units), for occupancy by persons with mobility impairments or hearing, vision or other sensory impairments shall provide a preference for those units as follows. First preference (regardless of applicant pool) for those units shall be given to persons with disabilities who need such units, in conformity with federal civil rights laws. This preference applies to

fully accessible units (e.g. in projects in which 5% of the total units are to be wheelchair accessible and 2% are to be communications accessible in accordance with applicable accessibility standards). This preference also applies in projects without fully accessible units but with adaptable units for persons with mobility impairments and/or hearing, vision or other sensory impairments. The preference applies to the adaptable units; however, such a preference is not required to exceed 5% (mobility) or 2% (sensory) of the total units within the project.

Reason:

The proposed change would establish a TCAC policy of leasing ADA and other adaptive units, on a priority basis, to households with disabilities who need those units. The intent behind the rule is to assure that accessible and adaptive units are made available to households who would benefit the most from those units. In this way, TCAC hopes to eliminate circumstances where an ADA unit is occupied by a household without physical or sensory impairments, while households with such needs await such a unit on a project's waiting list. In essence, the policy would better match adaptive units to households who need those accommodations.

Section 10337(c)(3)

Proposed Change:

(3) Certification requirements. Under penalty of perjury, a Credit project owner is required to annually, during each year of the compliance period, meet the certification requirements of U.S. Treasury Regulations 26 CFR 1.42-5(c), (~~which beginning January 1, 2001, includes~~ including certifications that no finding of discrimination under the Fair Housing Act, 42 USC 3601 occurred for the project), that the buildings and low income units in the project were suitable for occupancy taking into account local health, safety, and building codes , that no violation reports were issued for any building or low income unit in the property by the responsible state or local government unit, that the owner did not refuse to lease a unit to an applicant because the applicant had a section 8 voucher or certificate, and that except for transitional or single room occupancy housing, all low income units in the project were used on a nontransient basis. The following must also be certified to by the owner:

Reason:

The proposed change would simply remove the historic start date for the requirement.

Section 10337(c)(4)

Proposed Change:

(4) Status report, file and on site physical inspection. ~~Beginning in 2001, the~~ The Committee or its agent will conduct file and on site physical inspections for all projects no later than the end of the second calendar year following the year the last building in the project is placed-in-service, and once every three years thereafter. These physical inspections will be conducted for all buildings and common areas in each project, and for at least 20% of the low-income units in each project. The tenant file reviews will

also be for at least 20% of the low-income units in each project, but may be conducted on site or off site. Each year the Committee shall select projects for which site inspections will be conducted. The projects shall be selected using guidelines established by the Executive Director for such purpose, while the units and tenant records to be inspected shall be randomly selected. Advance notice shall not be given of the Committee's selection process, or of which tenant records will be inspected at selected projects; however, an owner shall be given reasonable notice prior to a project inspection.

Reason:

The proposed change would simply remove the historic start date for the requirement.

Section 10337(d)

Proposed Change:

(d) Change in ownership. It is the project owner's responsibility to comply with the requirements of Section 10320(b) and to inform the Committee of any change in the ~~ownership of the~~ project ~~and the~~ owner's mailing address.

Reason:

The proposed change adds a cross reference to Section 10320(b), which more specifically addresses ownership change requirements. Deletions also would eliminate inaccurate implications that only a notification is required by TCAC for proposed ownership changes.